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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to adequate housing

Final report submitted by Mr. Rajindar Sachar,
Special Rapporteur

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Introduction

Summary of first three reports

1. On 29 August 1991, at its forty-third session, the Subcommission on Prevention of Discrimination and Protection of Minorities adopted without a vote resolution 1991/26 in which it entrusted Mr. Rajindar Sachar with producing a working paper on the right to adequate housing, with a view to determining how best to further both the recognition and the enforcement of that right.

2. The Commission on Human Rights, at its forty-ninth session in its decision 1993/103, endorsed the decision of the Subcommission taken in its resolution 1992/26 of 27 August 1992, to appoint Mr. Rajindar Sachar as Special Rapporteur on promoting the realization of the right to adequate housing. The endorsement of the Commission was, in turn, approved by the Economic and Social Council in its decision 1993/287.

3. At the forty-fourth session of the Subcommission the working paper (E/CN.4/Sub.2/1992/15) was submitted and discussed at length. At the forty-fifth session of the Subcommission a progress report (E/CN.4/Sub.2/1993/15) was submitted - the first report of Mr. Sachar in his capacity as Special Rapporteur.

4. In its resolution 1994/14 of 25 February 1994, adopted at its fiftieth session, the Commission on Human Rights, welcoming the progress report of the Special Rapporteur, invited him to submit a second progress report to the Subcommission at its forty-sixth session.

5. The Special Rapporteur submitted his second progress report (E/CN.4/Sub.2/1994/20) to the Subcommission at its forty-sixth session. In its resolution 1994/38, the Subcommission welcomed the preliminary recommendations and conclusions contained in the second progress report and took note with interest of the draft international convention on housing rights. It requested the Special Rapporteur to submit his final report to the Subcommission at its forty-seventh session, which was endorsed by the Commission on Human Rights at its fifty-first session in its resolution 1995/19.

6. On 29 October 1993 a note verbale and letter were sent to Governments, United Nations bodies, specialized agencies, intergovernmental and non-governmental organizations, as well as community-based organizations, requesting them, pursuant to Subcommission resolution 1993/36, to provide the Special Rapporteur with information relevant to the preparation of his report. Nearly 50 replies were received from States, United Nations bodies and specialized agencies, intergovernmental organizations and non-governmental organizations. They are listed in annex III to the present report.

7. The Special Rapporteur wishes to express his gratitude for the considerable number of replies he received, which he has taken as an important encouragement of the work he is undertaking. He is very grateful for the amount of substantive information provided by Governments, United Nations bodies and NGOs, which has been extremely helpful in preparing the final

report. Many of the replies contained useful information on national legislation, including constitutional provisions. This information has been used to update annex I to his second progress report on constitutional sources of housing rights. That update appears as annex I to the present report. Chapter VI of the present report contains an analysis made by the Special Rapporteur of the replies received.

8. The Special Rapporteur's working paper (1992) focused primarily on what he recognized as the primary causes of the global housing crisis and various legal issues relating to the human right to adequate housing. The principal reasons for the still widespread denial of housing rights throughout the world, according to the Special Rapporteur, were: (i) the failures of government and development policies; (ii) housing discrimination; (iii) environmental health, disasters and housing; (iv) the withholding of information crucial to housing; (v) exploitation in the housing sphere; (vi) speculation and the commoditization of housing; (vii) forced evictions; (viii) armed conflict; (ix) the criminalization of housing; (x) structural adjustment programmes and debt; (xi) poverty and the deprivation of means; and (xii) the perpetuation of homelessness (E/CN.4/Sub.2/1992/15, paras. 22-57).

9. The Special Rapporteur's first progress report (E/CN.4/Sub.2/1993/15) provided a detailed legal analysis of the legal obligations of States to respect, protect and fulfil housing rights, resulting in the development of a synthesis of governmental obligations based on international legal standards. The first progress report also touched on the question of justiciability of housing rights and gave an overview of housing right jurisprudence.

10. One of the main misperceptions that the work on housing rights is subject to, and which is readily cited by those that do not accept the right to adequate housing as a human right, is that such acceptance would mean that every individual would start demanding a house, and that the resources at the disposal of States would be totally insufficient to meet such a demand. The Special Rapporteur has refuted such a narrow interpretation of the human rights approach in the following manner.

11. The Special Rapporteur submits that the legal recognition and obligations inherent in housing rights, at the most basic level, do not imply the following:

(a) That the State is required to build housing for the entire population;

(b) That housing is to be provided free of charge by the State to all who request it;

(c) That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so;

(d) That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or

(e) That this right will manifest itself in precisely the same manner in all circumstances or locations.

Of course, qualifications must be made to some of these perspectives so that States do not misinterpret and abrogate State responsibility, particularly for highly disadvantaged groups such as the homeless, the disabled, victims of riots or ethnic strife, man-made and natural disasters and other groups unable to fulfil their housing rights on their own.

12. Conversely, the fundamental necessity of an adequate place to live in peace, dignity and security is such that a recognition of housing rights must be seen and interpreted, in the most general sense, to imply the following:

(a) That once such obligations have been formally accepted, the State will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights;

(b) That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, inadequately housed or generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights; and

(c) That the State, directly upon assuming legal obligations, will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right in question.

13. In his second progress report (1994), with a view to clarifying the nature of the right to adequate housing and the still common neglect of this norm, the Special Rapporteur outlined several misconceptions and misinterpretations of the right to adequate housing which continue to hinder efforts to fulfil this right in a universal sense. These are: (1) social housing is invariably suspect; (2) national wealth increases home ownership; (3) housing rights are less fundamental than property rights; (4) the private sector or the market will guarantee housing for all; (5) legislative recognition of housing rights is sufficient to ensure the realization of these rights; (6) housing rights are non-justiciable; (7) most housing is built by the public and private commercial sector; (8) measuring homelessness is impossible; (9) squatters are criminals; (10) housing is a problem only in the developing countries; (11) public expenditure on housing is sufficient; and (12) the right to adequate housing is unrelated to other social concerns (E/CN.4/Sub.2/1994/20, paras. 17-45).

14. The report also sought to remove the misconception of the lack of resources as an impediment to achieving housing rights. It is important to bear in mind that according to UNCHS, about US$ 75 billion are required to meet the needs in housing. In that context reference may be made to the 1993 Report on the World Social Situation which analyses government expenditure on, inter alia, housing in both developing and developed countries. 1/ While government expenditure on housing in developing countries rose slightly in 1990 compared to 1980, the proportion devoted to this sector remained on the whole low, increasing from 2.94 per cent in 1980 to only 3.32 per cent of the

overall government outlays in 1990. Comparatively, government expenditure in 1990 for health amounted to 6.42 per cent, nearly double that allocated to housing, while education received nearly 15 per cent of public funds.

15. The plea of lack of resources sounds hollow in view of the finding of the United Nations Development Programme in 1992 that only a 3 per cent reduction in arms expenditure per year during the 1990s would make available by the year 2000 an amount of US$ 1.2 trillion for the industrialized countries and an amount of $279 billion for the developing countries.

16. The Special Rapporteur began his mandate three years ago with the hope that the debate in the Subcommission might persuade Governments to show an enriched understanding of the human right to adequate housing, and, much more importantly, might lead to the taking of steps by all relevant actors towards eradicating the inestimable human suffering which so often goes hand in hand with the deprivation of housing rights. Unfortunately, the Special Rapporteur has all too little good news to report to the Subcommission, and is alarmed as ever at the ongoing, and in many cases systematic, violation of the housing rights of the growing underclass of humanity who are now so routinely ignored. We hear reports daily of growing economies, liberalization of trade regimes, globalization of the world market and other such fancy phrases, as if such things were all that mattered in our world and these issues were inherently good for humanity. Sadly, the Special Rapporteur can only express dismay at the enduring and rapidly growing despair of the world's least advantaged citizens as the rights which were meant to be bestowed upon them are increasingly denied or ignored. Such a state of affairs is evident in the next section in which the Special Rapporteur reviews his activities over the past year and takes stock of the developments within the United Nations system regarding housing rights.

Recent developments on housing rights

17. Since the beginning of his mandate the Special Rapporteur has had the opportunity to visit a number of countries upon invitation from groups struggling for housing rights. In earlier reports the Rapporteur has reported on his findings from these visits. The intention in the final report is to continue this reporting and to attempt to draw out the dimensions of housing rights that have not been covered previously.

Thailand

18. The Special Rapporteur on a private visit to Thailand, used the opportunity to learn of the housing situation in the country. At a meeting with officials of the National Housing Authority, the Special Rapporteur was informed that houses were being offered for ownership to those able to pay instalments of 25 per cent of their monthly income. This, of course, leaves out the vast majority of the low-income group who cannot afford to pay more than 10 per cent of monthly income for housing. A recent study has shown that private sector housing is not able to penetrate to the poorest 30 per cent of the population. Moreover, the study demonstrates that extensive real estate business, encouraged mainly by a broad-based housing mechanism had a tendency

to trickle down market to a certain extent but had also stimulated land speculation markets thus increasing the pressure of eviction on the urban poor. 2/

19. A recent (1990) survey of the National Housing Authority indicates that there are 1.2 million slum dwellers in Bangkok, comprising 20 per cent of the city's population. One of the major problems these low-income communities are facing is insecurity of land tenure resulting from the unwillingness of the Government to improve their living conditions. A survey on evictions in 1988 showed that 28 per cent of existing slum communities were in various stages of eviction and about 71.5 per cent of people living in such communities expressed fear of the threat of eviction. 3/

20. The Special Rapporteur also learnt about a novel experiment intended to alleviate the housing problem for the low-income groups. The concept of land-sharing requires a developer to surrender a certain area of land to the occupiers at a reasonable price. This experiment has not met with much success because many a time the developer/landlord is not willing to surrender land at a reasonable price. In addition, if the people are prepared to relocate, the lack of any reasonably located area for that purpose acts as a serious impediment.

Malaysia

21. In December 1994 the Special Rapporteur participated in a fact-finding mission to Kuala Lumpur to look into the housing conditions and to assess the situation regarding evictions in the city and surrounding areas. He met officials of the Malaysian Housing Ministry and representatives of a number of non-governmental organizations. The Minister of Housing said candidly that the situation of evictions was being faced by more and more people and communities in Malaysia.

22. Site visits in Kuala Lumpur and the Klang Valley revealed the rapid pace at which urban poor communities are being evicted to provide luxury homes and facilities like golf-courses for the wealthier part of the society. The fact-finding mission revealed that the Malaysian Government is involved in several large development projects that will result in the eviction of poor squatters. These are: the new government administrative centre at Perang Besar, the new Kuala Lumpur International Airport at Sepang and the Second Link Causeway in Johore.

23. The inequity and heartlessness of these evictions appear all the more poignant when it is remembered that some 20 years ago the Government called on rural Malaysians to go to the cities where their labour was needed for the push towards industrial development. These migrants were told that they could stay where they wanted and were provided with civic amenities. These very people are being evicted today without proper resettlement.

24. Another serious problem is that of the conditions prevalent on estates (plantations), which are a clear violation of housing rights. It is admitted officially by the State Human Resources Communities Chairman that of the

24,827 estate homes, 5,540 have been found to fall below the minimum standards stipulated in the Housing Act. There is a serious lack of potable water and electricity in the majority of estate homes.

25. Serious violations of housing rights have resulted from the 1991 amendment to the Land Acquisition Act that removed the mention of "public utilities" from the Act. The result is that the private sector can now acquire land which would earlier have been used for public purposes. The pre-amendment condition was that a public utility purpose, such as the need for schools or hospitals, had to be recognized prior to acquisition of land.

26. The Special Rapporteur is particularly disturbed by the manner in which the Malaysian Government is dealing with the housing rights situation. The Government has also not ratified any international instruments containing the right to housing. The Special Rapporteur urges the Government to do so and to respect the housing rights of its citizens.

Palestine

27. In his earlier reports, the Special Rapporteur identified as glaring causes of the international housing crisis prevailing situations of armed conflict. The extent of homelessness and insecurity generated by such situations has resulted in large-scale deprivation and the disruption of people's lives and identities.

28. One of the most poignant examples of the devastating impact of a state of occupation is that of the Palestinians uprooted from their ancestral homes since the occupation in 1967 of East Jerusalem by Israel. Not until he visited that area did the Special Rapporteur realize the deliberate, systematic violation of housing rights undertaken by the Israeli Government. The wanton destruction of Arab homes and the takeover of the lands where they have lived for generations to make place for Jewish settlements defies description. Recent studies based largely on official Israeli government sources demonstrate the systematic policy of discrimination being followed in Jerusalem. 4/

29. As an analyst has recently pointed out:

> "The intense settlement activity that has increased the number of Jews living in Jerusalem has been accompanied by government policies since 1967 to limit the number of Palestinians residing in Jerusalem to no more than 24 per cent of the city's population. This policy directive has been recently restated in a 1992 official report by a committee of the Israeli Ministry of the Interior (the Kubersky Committee) established to investigate the annexation of territory east of Jerusalem. Israel has succeeded, in this goal of a 74 per cent Israeli to a 24 per cent Palestinian population ratio, through intricate bureaucratic restrictions for Palestinian East Jerusalem residents. Israeli housing and planning policies are responsible for decreasing the Palestinian population while simultaneously increasing the Israeli population in East Jerusalem. These policies include: (i) expansion of municipal boundaries to include Palestinian land while excluding Palestinian population; (ii) expropriation of Palestinian land for Jewish construction and the

confining of Palestinian construction to built-up areas; (iii) excluding the Palestinians from the planning process; (iv) keeping Palestinian land unplanned or declaring 'green areas' which cannot be used for housing; and (v) demolition of unlicensed Palestinian homes to keep areas vacant for future confiscation". 5/

30. The Special Rapporteur had thought that now that the peace process had begun, between the Palestinian Authority and the Israeli Government, not only would the human rights violations cease but adequate compensatory steps would have been taken by the Israeli Government. But, at the time of writing of the present report the situation seems only to have worsened. In the absence of any censure from the Western nations (the United States even vetoed the resolution of the Security Council asking Israel to halt further confiscation) the Israeli Government publicly announced with fanfare further confiscation of 53 hectares of Arab land in East Jerusalem. The condemnation of the Arab and Asian countries was brushed aside with disdain. The Israeli Government stated that it would go ahead with the confiscation of this area, brushing aside the advice and warning from Arab States that that might jeopardize the peace accord with the Palestine Liberation Organization (PLO).

31. A near war-like situation was being contemplated. However the danger of a motion of no confidence being passed against Prime Minister Rabin's Government, as threatened by Arab members of Parliament, has averted this needless violation of housing rights. But the question needs to be asked: how long will this suspension of land confiscation continue? The Special Rapporteur believes that all such actions stem from not accepting that violations of housing rights are not merely a breach of any gratuitous promise but are, in fact, violations of human rights - violations which no State can be allowed to commit if it wants to remain a member of the community of civilized nations.

32. In the light of these unfortunate developments, the Special Rapporteur is pleased to report the mobilization that is taking place on the ground in Jerusalem to counter the policies the Israeli Government is following. The Special Rapporteur has received information that for the past six months a vibrant campaign for the housing rights of Palestinians in Jerusalem is under way. This campaign is one of the activities of the Palestine Housing Rights Movement. One significant result of this effort is the drafting and recent public release of "The Jerusalem Declaration", the draft charter of the Palestine Housing Rights Movement.

33. The Special Rapporteur would like to comment that the contents of the Jerusalem Declaration embody the understanding of the right to housing that the Rapporteur has stressed in his reports. In an all too dismal scenario, the bright voice of grass-roots activism and collective effort needs to be recognized. The Declaration is based on sound legal principles and international human rights instruments. In the interest of furthering attention by the United Nations human rights programme to housing rights and as an example of the nature of articulation that is possible, and needs to be studied by housing rights struggles across the world, the Declaration is attached as an annex to the present report (annex II).

34. Continuing with the developments on housing rights in the past year the Special Rapporteur would like to mention the formation of a housing rights campaign in Israel itself. The Arab Coordinating Committee on Housing Rights in Israel was formed in December 1994 and has already begun utilizing international law on the right to housing to aid its struggle for an end to the discriminatory housing and planning policies of the Government of Israel against the Palestinians residing in Israel. 6/

35. The Special Rapporteur has also learnt of the emergence of housing rights campaigns in the Dominican Republic, the Philippines and South Africa. In addition to the ongoing campaigns in India and Colombia these efforts by non-governmental organizations indicate the value that NGOs across the world are placing on the housing rights approach. The Subcommission may wish to consider whether a further study should be undertaken in order to examine the strategies being followed by such campaigns with a view to making available this information to groups facing similar issues worldwide.

36. With specific reference to South Africa, the Special Rapporteur has received information on the results of a workshop on economic and social rights held in Johannesburg in April 1995 devoted to developing means of including - in a fully justiciable way - economic and social rights in the new South African Constitution. Special attention was given to formulating the right to adequate housing within the new constitution in a manner reflecting popular aspirations for a dignified life and which would be subject to judicial enforcement. The workshop framed a draft article on housing rights for the consideration of the legislators, illustrating the fundamental proposition that economic and social rights can be included in the new Constitution in a manner such that they become rights of substance rather than unenforceable promises. The draft article reads as follows:

> "Every person shall have the right to adequate housing, which shall include but is not limited to:
>
> (a) Security of tenure and protection against arbitrary, unreasonable, punitive or unlawful eviction;
>
> (b) Equitable access to appropriate land, services, building materials and amenities;
>
> (c) Equitable access to credit, subsidies and financing on reasonable terms for disadvantaged households;
>
> (d) Special measures to ensure adequate housing for households with special needs or lacking necessary resources;
>
> (e) Provision of appropriate emergency housing where necessary."

37. The Special Rapporteur is considerably encouraged by this development and hopes that fully justiciable economic and social rights, including the right to adequate housing, will be contained in the final South African Constitution and encourages legislators in the country to ensure such protection to the entire population that has so long struggled for a life of security and dignity.

United Nations Centre for Human Settlements (Habitat) housing rights strategy

38. The Special Rapporteur is also inspired by the preparation and contents of a document prepared by the United Nations Centre for Human Settlements (Habitat) entitled "Towards a housing rights strategy: Practical contributions by UNCHS (Habitat) on promoting, ensuring and protecting the full realization of the human right to adequate housing" (HS/C/15/INF.7). The strategy is comprised of a six-point agenda relating to the following activities: (a) promotional functions; (b) advisory services and technical cooperation; (c) monitoring activities; (d) promoting the housing rights of specific dweller groups; (e) networking; and (f) the United Nations Conference on Human Settlements (Habitat II) and housing rights.

39. As far as the Special Rapporteur is aware, this document represents one of the very few initiatives within the United Nations system relating to concrete measures directed towards actually implementing specific economic and social rights, set within a human rights framework. Indeed, it is long overdue that the United Nations specialized and other agencies involve themselves more deeply in the implementation of basic human rights directly relevant to their overall mandates. The Special Rapporteur strongly encourages UNCHS (Habitat) faithfully to set in motion the housing rights strategy, in accordance with resolution 15/2 adopted on 1 May 1995 by the Commission on Human Settlements at its fifteenth session and to assist in developing a United Nations system-wide approach towards realizing the right to adequate housing for all within the shortest possible time-frame.

Committee on Economic, Social and Cultural Rights

40. As far as the human rights mechanisms of the United Nations are concerned, the Committee on Economic, Social and Cultural Rights has continued its exemplary efforts towards enforcement and implementation of the right to adequate housing as enshrined in article 11.1 of the International Covenant on Economic, Social and Cultural Rights, and as elaborated in its General Comment No. 4 (1991) on the right to adequate housing. Even a perfunctory glance at the concluding observations of the Committee at its eleventh (1994) and twelfth (1995) sessions clearly reveals the seriousness with which the Committee has pursued housing rights issues of States parties to the Covenant.

41. The Special Rapporteur is particularly impressed with the concluding observations concerning the Committee's examination of the housing rights situation in the Dominican Republic, adopted in December 1994. These concluding observations are noteworthy in many respects, not the least of which are their overall precision and specificity, as well as the recommendations submitted to the Government of the Dominican Republic regarding what are clearly positive obligations on this and other States parties regarding active interventions designed to secure the full enjoyment of housing rights for disadvantaged sectors of that society. Indeed, the Special Rapporteur would encourage everyone to examine closely these concluding observations for they reveal to a very significant degree how housing rights provisions of a relatively general nature (as enshrined, for instance, in the Covenant) can be adjudicated upon by an international body,

and act as the legal basis for a series of very detailed steps which must be taken by States parties in order to ensure full compliance with the multifarious obligations arising under the Covenant.

42. Moreover, the Special Rapporteur understands that the Committee on Economic, Social and Cultural Rights was able to undertake a precedent-setting and constructive on-site mission to another State party, Panama. The mission, which took place in April 1995, visited numerous sites throughout the country, held extensive discussions with government officials, non-governmental and community-based organizations and civil society generally. The constructive and non-confrontational approach taken by the Committee within the context of the mission to assist the Government in fulfilling its housing rights obligations under the Covenant provides a very useful basis for undertaking similar missions to other States parties in the future. Above all, this exercise indicates that steps towards a greater degree of satisfaction of housing rights can be taken when both the Committee and States parties are willing to pursue this manifestation of constructive dialogue, in consultation with civil society.

43. The Committee has also been invited to consider adopting a general comment on forced evictions by the Subcommission in its resolution 1994/39, and the Special Rapporteur would encourage the Committee to do so at the appropriate time.

I. UNDERSTANDING THE SCOPE OF HOUSING RIGHTS/ RECONCEPTUALIZING HOUSING RIGHTS

44. The Special Rapporteur annexed a note on "reconceptualizing housing rights" to his working paper (E/CN.4/Sub.2/1992/15). The intention was to present the holistic content of the right to housing that transcended the narrow "housing as four walls and roof" conception by taking within its sweep various aspects of the right to live in security and dignity. The Special Rapporteur was at that time attempting to project both the popular understanding of the right and take into account the legal developments that had taken place within the United Nations system, such as General Comment No. 4 on the right to adequate housing adopted by the Committee on Economic, Social and Cultural Rights. Earlier reports have, for example clarified the link between the right to housing and the right to property and the congruent nature of the right to a safe environment and the right to housing. It is the intention of the Special Rapporteur to continue the work on understanding the scope of the right to housing. This task calls for both a closer look at the human rights that are indivisible from the right to housing and the identification of particular groups that require increasing focus throughout the United Nations system.

A. The right to housing and women's rights

45. The Special Rapporteur has in an earlier report briefly mentioned the importance, in all areas of housing rights, of recognizing and promoting the critical role of women. From all information available to the Special Rapporteur it is abundantly clear that women across the world continue to suffer from discrimination in the attainment of all aspects of the right to housing: land security and inheritance of rights to land and property; access

to credit facilities, access to information essential for participation in housing activities and in contributing to the improvement of the living environment; availability of essential housing services and resources including potable water, sanitation, fuel and fodder and access to appropriate housing projects, upgrading schemes and resettlement areas. 7/

46. The issue of land security is of primary importance. It is clear that in most countries of the world women have neither a right to the home in which they were born nor to the home they live in after marriage. This essential homelessness of women is a major factor in limiting the valuable contribution women can make in gaining and retaining a home and, in turn, in building society. 8/ Even in countries where inheritance laws and laws governing rights to home ownership and security of tenure have changed, women are seldom able to exercise these rights. This has a debilitating affect, even leading to the conclusion that the most critical factor in the perpetuation of gender inequality and poverty is the continued discrimination faced by women in all matters of land and property. 9/

47. In addition to the inequities of land ownership, women also continue to be the hardest hit by evictions and inadequate resettlement. As has been pointed out in a report of the Secretary-General to the Commission on the Status of Women, "Resettlement and evictions should be avoided, since they particularly increase the vulnerability of women and children and because women bear the brunt of traumatized and dislocated communities". 10/

48. In many parts of the world the growing energy crisis has also created unsustainable hardships for women who have to spend more and more of what could be productive time collecting water, fuel and fodder. During the past two decades the energy crisis has deepened and the availability of essential natural resources has declined owing to the adoption of models of economic growth that discriminate against women. This situation calls for a concerted effort by all concerned authorities. 11/

49. The Special Rapporteur has stressed in his reports that gaining and securing the right to housing can lead to the attainment of other rights and create possibilities for the improvement of the living environment. As the Commission on the Status of Women has stated "Security of tenure promotes greater participation of women in community management. The feeling of belonging encourages investment in the improvement not only of the dwelling units but also the neighbourhood as a whole ... This in turn, helps households escape the poverty trap and has a positive effect on the upbringing of children". 12/

B. Children and housing rights

50. The physical and social development of children is closely linked to the environment in which they grow up and the living conditions they have to confront. The child's self-confidence and identity depends significantly on having access to a place to live in security and dignity. The absence of these conditions leads to the child being deprived of many basic rights such as the right to health, education, protection from economic exploitation and abuse and the right to a legal identity and citizenship. In a world where poverty and marginalization of vulnerable groups are on the rise the Special

Rapporteur would like to stress the particular importance of the right to adequate housing for children. Particularly important is the need to focus on the structural causes in societies that are leading to the disintegration of family structures and the growing phenomenon of street children. 13/

51. Recent developments in the United Nations system demonstrate the utility of the housing rights approach in addressing the basic survival and livelihood questions confronting different sectors of society. The Special Rapporteur is particularly encouraged by the adoption by the Subcommission at its forty-sixth session of resolution 1994/8, entitled "Children and the right to adequate housing". The Special Rapporteur welcomes, in particular, the linkage made in the resolution between housing rights, the prevalence of inadequate living conditions and the continued existence of widespread poverty. The resolution also makes the valuable point that "one of the areas where the indivisibility and interdependence of human rights and of the rights of children becomes most apparent is with respect to the existence of widespread poverty leading to inadequate housing and living conditions".

52. The Special Rapporteur is also encouraged by the clear recommendations set forth in the resolution to various entities concerned with the rights of children such as Governments, UNICEF and the Committee on the Rights of the Child. Given the importance that the Special Rapporteur has all along attached to the primacy of action by affected groups themselves, the resolution makes a welcome departure in insisting on the full participation of children themselves in the development of effective strategies for improving the housing and living conditions of children.

C. Land rights and the right to food

53. The Special Rapporteur has attempted in his reports to project the right to housing as a central aspect of the bundle of rights that protect the survival and livelihood of people and communities. For millions of people all over the world especially in rural areas, land is the principal resource for survival. This dependency on land is not limited to tribal or indigenous populations but encompasses small and marginal farmers and the rural agricultural labour that depends on land for livelihood. The failure by Governments to either adopt land reforms or implement the existing statutes, and the failure to arrest speculation and the commercialization of land, has resulted in a situation today where evictions, landlessness and homelessness are on the increase. Extensive studies demonstrate that particular groups are severely affected by the lack of access to land rights and the life-giving value of the attainment of these rights. 14/

54. The Special Rapporteur sees land as being a basic housing resource and views land and housing rights as congruent entitlements. When housing is viewed as the right to a place to live in security and dignity (as international legal developments in recent years have done) it necessarily encompasses security of tenure and equitable access to land resources. The violations that affect access and entitlement to land also have an impact upon housing security and are among some of the most important causes of homelessness. The Special Rapporteur would like to argue that the two rights need to be viewed holistically and that a deeper understanding of their

inherent linkages is necessary to strengthen the policy and legal interventions necessary to promote these essential survival and livelihood rights.

55. The denial of housing and land rights through the destruction of the natural resource base, the prevalence of forced evictions and the existence of inadequate resettlement and compensation policies reduces people and communities to a state of landlessness and homelessness that leads to hunger and malnutrition. The right to food or, as has been better expressed, the right to feed oneself, is therefore critically linked to the right to housing. 15/

D. The right to health and the right to housing

56. The Special Rapporteur, indicated in his working paper that one of the causes of the global housing crisis was the continued existence of inadequate housing and living conditions that lead to serious ill-health and daily problems of survival. In 1995, at the time of writing, the situation has, according to all available sources, not changed and if anything worsened. The 1995 World Health Report of the World Health Organization is a telling testimony to the continued threat facing millions of the world's dwellers faced with the ravages of increasing poverty, lack of access to essential civic services (particularly potable water and sanitation) and the concomitant increase in disease and epidemics resulting from unhygienic and life-threatening disease conditions.

57. The need for interventions at all levels to remove the obstacles that prevent the existence of adequate housing and living conditions is an imperative facing all levels of society. In an attempt to identify the principles on which such action could be based the Special Rapporteur has found the work of WHO helpful. The principles put forward, for example, in the 1989 WHO publication entitled Health Principles of Housing, are useful starting points for devising policy measures to counter inadequate living conditions. In the section on "Principles related to health needs", the relationship between housing conditions and human health are set forth in six major principles: (i) protection against communicable diseases; (ii) protection against injuries, poisonings and chronic diseases; (iii) reducing psychological and social stresses to a minimum; (iv) improving the housing environment; (v) making informed use of housing and (vi) protecting populations at risk.

58. Under the first principle, the following conditions are stressed as being necessary to ensure adequate housing: safe water supply; sanitary excreta disposal; disposal of solid wastes; drainage of surface water; personal and domestic hygiene; safe food protection and structural safeguards against disease transmission. The same report states that "At its best, appropriate housing promotes physical and mental health. It provides people with psychological security, physical ties with their community and culture, and a means of expressing their individuality". The Special Rapporteur affirms these views that are in full conformity to the human rights approach and define the indivisible relationship between the right to health and the right to housing.

E. The human right to adequate housing and the indivisibility of all human rights

59. Throughout his mandate, the Special Rapporteur has stressed the indivisibility and interdependence of all human rights, while placing emphasis upon discussing the inherent, indispensable and permeable relationship between the full enjoyment of the right to adequate housing and certain civil and political rights. The Special Rapporteur is convinced that a wide range of civil and political rights will be compromised in the absence of measures geared towards respecting, protecting and ensuring the right to adequate housing. Conversely, violations of many civil and political rights have a direct bearing upon the enjoyment of housing rights. The examples of regional and international housing rights case-law contained in earlier reports of the Special Rapporteur exemplify the congruous nature of housing rights and civil and political rights. The indicators presented in this report also demonstrate the clear linkage between the two sets of rights.

60. It is now indisputable that rights including the right to privacy, the right to family life, the right to equal protection and benefit of the law, the right to gender equality, the right to be free from discrimination, the right to due process of law, the right to security of the person, the right to freedom of movement and the freedom to choose one's residence, the right to free association, the right to freedom of expression, the right to property, the right to remain in place, the right to seek, receive and impart information and other rights are intrinsically linked to the full realization of the right to adequate housing. To separate these rights from housing rights, as some conservative commentators have sought to do, undermines the principles of indivisibility and interdependence and disregards the fact that there are as many "negative" obligations incumbent upon States vis-à-vis housing rights as there are "positive" State duties.

61. While much can be said on this issue, the Special Rapporteur would like to simply reiterate the necessity of all human rights institutions, adjudicating bodies, Governments, non-governmental organizations and other relevant actors to consider fully and internalize the inherent linkage between the many human rights that have a direct impact upon housing rights.

II. APPROACHING HABITAT II: SOME CAUTIONARY REMARKS

62. While the incorporation of international law in national legislation is gaining ascendency, a development in the opposite direction must cause dismay and disappointment. The second meeting of the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II) (to be held at Istanbul in June 1996) was convened at Nairobi in April 1995. The Commission on Human Settlements also met at the same time.

63. The background papers and other documents, such as the draft Global Plan of Action Towards a Housing Strategy for All, proceeded on the undisputed acceptance that the right to adequate housing was a human right. Indeed it could not be otherwise in view of Commission on Human Settlements resolution 14/6 of 5 May 1993, entitled "The human right to adequate housing". That this mandate was taken seriously was reiterated in a communication of 1 December 1993 from the Under-Secretary-General of UNCHS (Habitat) to the

Centre for Human Rights providing the information that UNCHS (Habitat) had recently been given a specific mandate directly to address the topic of the human right to housing. It was also stated in this communication that in paragraph 7 of the said resolution, the Executive Director of UNCHS (Habitat) had been requested to bring the resolution to the attention of all States with a view to soliciting their views on how the human rights to adequate housing could most effectively be implemented and monitored.

64. The above position was repeated by UNCHS (Habitat) in its response of 11 January 1994 to the Rapporteur's first progress report by emphasizing that the human right to adequate housing was addressed in a range of international treaties and agreements.

65. It was therefore to the complete surprise and dismay of the Special Rapporteur that at the fifteenth session of the Commission on Human Settlements at Nairobi in April 1995, the United States (which incidentally has not yet ratified the International Covenant on Economic, Social and Cultural Rights) brought forth serious revisions seeking to delete from various documents of the Preparatory Committee for Habitat II and the Commission on Human Settlements all references to the term "The human right to adequate housing".

66. It later on however did not press these revisions in view of the fact that it was able to persuade the other reluctant delegates to pass resolution 15/2, in which the Commission took note of the report of the Executive Director entitled "Towards a housing rights strategy: practical contributions by UNCHS (Habitat) on promoting, ensuring and protecting the full realization of the right to adequate housing", and requested the Executive Director of Habitat to undertake, in consultation with other United Nations bodies, further examination on and update of that report, taking into consideration the legal, social, economic, political and practical aspects of the subject and the views and concerns expressed on this by Member States, including those regarding the existence and/or the legal status of the right to adequate housing (emphasis added).

67. This resolution has caused great apprehension to the Special Rapporteur. Unless measures are taken immediately, these developments could have a serious affect on United Nations system-wide progress on the human right to adequate housing.

68. The Special Rapporteur might have understood (though it would still have been a disappointing development) if the resolution had confined itself to examining the practical aspects of the subject. But when it seeks to examine the economic and political aspects of the subject, it is taking a regressive step. When the resolution further requests an examination of the "existence and/or legal status of the right to adequate housing", it is submitted with the greatest respect that this aspect, namely, whether the right to adequate housing or for that matter any other right is a human right or not, is outside the mandate of Habitat.

69. It is axiomatic that human rights are not a gift from States, nor are they supposed to flow solely from any legal document formulated by States. Human rights are inherent in every person in any civilized society, by the

mere fact that he or she is an individual. This aspect is affirmed in the International Covenant on Economic, Social and Cultural Rights, the preamble to which states:

> "**Recognizing** these rights derive from the inherent dignity of the human person;
>
> **Recognizing** that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights;
>
> **Realizing** that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant; and
>
> **Have agreed** upon the following articles".

Those articles include article 11.1 in which the States parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.

70. The Universal Declaration of Human Rights, conceived as a common standard of achievement for all peoples and nations has provided the basis for the development of international instruments on human rights and has been and rightly continues to be a fundamental source of inspiration for national and international efforts for protection and promotion of human rights and fundamental freedoms.

71. In view of this authoritative recognition of the right to adequate housing as a human right it is impermissible for any United Nations commission or agency to cast doubt about the existence and legality of this human right. Indeed it would be a strange irony if any subordinate United Nations agency was permitted to give a contrary interpretation to that given by the parent body - the General Assembly.

72. Of course the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the Committee on Economic, Social and Cultural Rights put up for consideration detailed studies like the present study by the Special Rapporteur, or legal interpretations, such as, the path-breaking General Comment No. 4 of that Committee. But all these activities have the sole aim of making this human right to housing more effective and urgent. There is never even a whisper of doubt as to the existence of such a human right. It is for this reason that the Special Rapporteur maintains that the sentiments contained in Commission on Human Settlements resolution 15/2 of 1 May 1995, mentioned above, are beyond the competence of that Commission.

73. The anomaly of the Commission on Human Settlements taking such an untenable stand as in resolution 15/2 - which, apart from being contrary to various international conventions which have recognized the human right to

adequate housing, would really amount to putting the clock back to 1948, when the Universal Declaration of Human Rights was proclaimed - is that it also makes a mockery of the Vancouver Declaration on Human Settlements, 1976 and the Global Strategy for Shelter to the Year 2000, which specifically state that adequate shelter and services are basic human rights.

74. This action in passing resolution 15/2 is also incongruous when viewed in the light of other resolutions passed by the Commission on Human Settlements at the same session. Thus, resolution 15/3 of 1 May 1995 shows the concern of the Commission on Human Settlements about the fact that in many societies women still do not have legal rights to housing, land and access to credit, which constitute essential prerequisites for the realization of free participation and empowerment of women. Also noteworthy is resolution 15/14, likewise adopted on 1 May 1995, entitled "Concrete measures towards the full realization of children's housing rights".

75. Is it not paradoxical that while specifically recognizing the right to adequate housing of women and children, the Commission on Human Settlements at the same time, as mentioned above, in resolution 15/2 purports to examine the existence or the legal status of the right to adequate housing? Surely, if one accepts the legal right to adequate housing in the case of women and children, the said resolutions must proceed on the implicit acceptance of the human right to adequate housing generally.

76. The Special Rapporteur expressed his apprehension to a meeting of the Committee on Economic, Social and Cultural Rights, which he was invited to address in Geneva on 16 May 1995. He pleaded that the Committee, which had contributed immensely to the work on the right to housing, convey its serious concern at this development and also make it clear that no United Nations agency could call into question the human right to adequate housing. The Special Rapporteur has learnt subsequently that the Committee on Economic, Social and Cultural Rights has decided to prepare a communication on the right to housing to be sent to the Preparatory Committee for Habitat II. 16/

77. The Rapporteur would, in all humility, now make a similar plea to the Subcommission also to reiterate that the right to adequate housing is a basic human right, so that, before the convening of Habitat II in June 1996, no doubt is left in anybody's mind as to the context of the right to adequate housing. The Commission on Human Rights at its session in 1996 might also be requested to affirm the view of the Subcommission. This course would also reaffirm the Vienna Declaration and Programme of Action in which the World Conference on Human Rights emphasized the universality and indivisibility of all human rights.

78. It is still, however, the hope of the Special Rapporteur that Habitat II next year will reaffirm the right to adequate housing as a human right which the Commission on Human Settlements has accepted for two decades and which it recently reaffirmed in its resolution 14/6 of 5 May 1993, entitled "The human right to adequate housing".

III. CLARIFYING AND DETAILING THE JUSTICIABILITY OF THE HUMAN RIGHT TO ADEQUATE HOUSING

79. In his second progress report the Special Rapporteur expressed the opinion that international instruments like the International Covenant on Economic, Social and Cultural Rights fully qualify to be called international law (E/CN.4/Sub.2/1994/20, para. 80). This, therefore, obligates the State to recognize the right to adequate housing which must automatically empower a citizen to compel the State by recourse to law to honour its international obligations regarding housing rights.

80. Despite, therefore, the inclination of a few observers who continue to suggest the non-justiciability of socio-economic human rights, including housing rights, a deeper examination of the normative content of housing rights, decisions and approaches taken by national judiciaries and the jurisprudence of the regional and international human rights bodies reveals that the vast majority of the constituent elements of housing rights as recognized under international and national law are in fact, justiciable. The Rapporteur agrees fully that:

> "Denying an individual or group the ability to make constitutional claims against the state with respect to nutrition, housing, health and education excludes those interests from a process of reasoned interchange and discussion, and forecloses a useful forum for the recognition and redressing of injustices." 17/

81. The broad domain of national housing law (much of which has a direct bearing on housing rights provisions established under international law) has generated extensive jurisprudence within States, particularly concerning landlord-tenant relations, housing discrimination, rent conflicts, security of tenure and evictions. 18/

82. The question of whether the provision of domestic legal remedies with explicit regard to the human right to adequate housing are possible (if not indispensable) has been answered affirmatively by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 on the right to adequate housing, and is evidenced in the Committee's jurisprudence. 19/

83. In its monitoring function, the Committee on Economic, Social and Cultural Rights has developed its own housing rights jurisprudence through, inter alia, the issuance of concluding observations following the consideration of States reports. During its 12 sessions thus far, the Committee has had the opportunity of examining many of the legal and other issues relating to the housing rights situations in a large and diverse number of countries. The Committee has devoted particular attention to the practice of forced evictions carried out by States parties to the Covenant, and has regularly condemned evictions as a violation of the Covenant. 20/

84. Additionally, in its most recent five sessions (eighth to twelfth sessions, 1993-1995), the Committee has specifically addressed housing rights issues in States parties relating to:

(a) The right of tenants;

(b) The universal provision of security of tenure;

(c) Homelessness;

(d) The need to construct low-income housing;

(e) The lack of domestic remedies for housing rights violations;

(f) Land regularization;

(g) The prevalence of inadequate living conditions and service availability;

(h) The need to establish a national housing commission;

(i) Protection from discrimination within the housing sphere;

(j) Expropriation for social housing purposes;

(k) The unacceptability of rent increases;

(l) The inadequacies in tackling housing shortages;

(m) The inadequacies of national housing policies;

(n) The need to develop more active and formal measures to improve the housing situation;

(o) The subhuman living conditions facing "cage home" dwellers;

(p) The need to consider adopting domestic laws on the enforcement of the right to housing;

(q) The poor living conditions facing persons subjected to relocation;

(r) The obligation of a Government to rehouse persons who are living in conditions which threaten their life and health;

(s) The right of all persons residing in precarious conditions to be assured of the rapid provision of adequate housing in full conformity with the provisions of the Covenant;

(t) The necessity of repealing presidential decrees incompatible with the Covenant;

(u) The necessity of applying existing constitutional housing rights provisions.

85. One writer has commented that:

> "to the extent that the Committee [on Economic, Social and Cultural Rights] is in a unique and pivotal position as the sole supervisory body, its interpretation may be seen to reflect the common understanding of

> States parties as to the meaning of the Covenant provisions. It is entirely appropriate, then, for domestic courts to have reference to the Committee's interpretation of the provisions of the Covenant where possible". 21/

86. The compulsion and obligation to comply with international treaties, even when they seem to conflict with domestic legislation, is being accepted in the United Kingdom, which has had its fundamental basis in the total sovereignty of its Parliament. This welcome trend has been noted by Wade and Forsyth in The Administrative Law, a book of undoubted authority. 22/

87. The European Communities, of which Britain became a member in 1973, have their own legal system, which has been vigorously developed by the European Court of Justice in Luxembourg in accordance with the Treaties of Paris (1951) and Rome (1957) 23/ and the legislation made under them by the Community authorities. It is a condition of membership, fulfilled in Britain by the European Communities Act, that Community law takes precedence over national law, and many rules of Community law have direct effect in the member States, so that they must be applied and enforced by national courts.

88. The impact on British administrative law, which came slowly at first, has now made itself felt dramatically. Community law has revolutionized one of the fundamentals of constitutional law by demanding that an Act of the British Parliament must give way if it is contrary to the Community law. But for a court to disapply an act of Parliament was a revolutionary change. As stated by Wade and Forsyth

> "Unlike other States who are parties to the European Convention on Human Rights and Fundamental Freedoms of 1950, Britain has failed to incorporate the Convention into domestic law, so that its status is that of a treaty only and complainants must undertake long and expensive litigation in Strasbourg. But the courts, though unable to enforce the Convention directly, have made some progress towards giving effect to it indirectly. They will take it into account in construing statutes or regulations in cases of ambiguity. In one case Lord Reid said that it was hardly credible that Parliament or any government department would act contrary to it. Several times it has been held that regard ought to be had to the Convention as an aid to interpretation, and in one case under the common law, where arguments were evenly balanced, they treated the Convention as decisive. Distinguished judges, speaking extrajudicially, have suggested how this policy could be carried further; and in a case in the House of Lords, Lord Griffiths acknowledges the responsibility of the judiciary to refuse to countenance behaviour that threatens either basic human rights or the rule of law." 24/

89. In India, article 21 of the Constitution mandates that "no person shall be deprived or his life or personal liberty except according to procedure established by law". There is no legislation making it obligatory on the State to provide free and compulsory education to children; of course there is the directive principles (which are stated specifically in the Constitution not to be legally enforceable). A citizen, however, complained that it was obligatory on the State to provide free education up to 14 years and that this was his fundamental right guaranteed by article 21 and encompassed within the

expression "life". The court, while accepting the plea of the citizen, observed that it was true that the article was worded in negative terms, but it was well established that article 21 had both a negative and an affirmative dimension. 25/

90. The court emphasized that the reason was that great concepts like liberty and life were purposefully left to gather meaning from experience. They related to the whole domain of social and economic fact. The drafters of the Constitution knew too well that only a stagnant society remained unchanged. In another significant decision in 1992, in interpreting the responsibility of a principal employer to pay for employees health contribution scheme rather than to try to avoid its liability by passing it on to subcontractors, the court invoked the International Covenants. Thus it observed that article 25.1 of the Universal Declaration of Human Rights provided that everyone had the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care and the right to security in the event of sickness or disability; and that article 7 (b) of the International Covenant on Economic, Social and Cultural Rights recognized the right of everyone to the enjoyment of just and favourable conditions of work which ensured, in particular, safe and healthy working conditions. 26/

91. Several other regional human rights mechanisms (the European Committee of Independent Experts, the European Commission and Court of Human Rights), additional United Nations treaty bodies (the Committee on the Elimination of Racial Discrimination, etc.) and a variety of national and local courts have directly considered housing rights issues in their various judgements, decisions, views and case-law, very frequently in support of broad interpretation of existing law. Many of these decisions were elaborated in earlier reports of the Special Rapporteur.

92. Notwithstanding the position taken by States, almost all of them have passed legislation on various aspects of housing rights, which automatically make this the subject of review and thus justiciable. 27/

93. Regarding the justiciable rights of homeless persons, which are often viewed with severe scepticism, the substantive provision of accommodation to them is not as uncommon or radical as often thought - the United Kingdom Homeless Act being one example. Moreover, even in certain cities in the United States, such as New York, the public authorities are under an obligation to at least provide temporary shelter to homeless persons and families. In many developing countries the direct supplying of land to landless families amounts to the same type of substantive provision.

94. Although governmental accountability for the respect, protection, promotion and fulfilment of housing rights is now well established under international law, measures of implementation and, in particular, judicial enforcement remain inadequate. Despite major progress regarding the definition of housing rights and the concomitant State obligations, the much-enhanced stature of this norm at both the international and national levels, and its growing prominence generally, enforcement at the international level will only be possible through an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

95. Based on the detailed analysis of the human right to adequate housing carried out by the Special Rapporteur since 1992, coupled with recent developments in this area, 28/ the following elements of this right must be viewed as inherently justiciable, whether in national, regional or international settings:

(a) Protection against arbitrary, unreasonable, punitive or unlawful forced evictions and/or demolitions;

(b) Security of tenure;

(c) Non-discrimination and equality of access in housing;

(d) Housing affordability and accessibility;

(e) Tenants' rights;

(f) The right to equality and equal protection and benefit of the law;

(g) Equality of access to land, basic civic services, building materials and amenities;

(h) Equitable access to credit, subsidies and financing on reasonable terms for disadvantaged groups;

(i) The right to special measures to ensure adequate housing for households with special needs or lacking necessary resources;

(j) The right to the provision of appropriate emergency housing to the poorest section of society;

(k) The right to participation in all aspects of the housing sphere;

(l) The right to a clean environment and safe and secure habitable housing.

96. The Special Rapporteur is therefore more than convinced that the right to adequate housing can be legally enforced against the States which are not fulfilling their obligations as mentioned above. The Special Rapporteur also believes that States must ensure the provision of domestic remedies for each of these fundamental aspects and core contents of the human right to adequate housing.

IV. INDICATORS FOR THE HUMAN RIGHT TO ADEQUATE HOUSING: TOWARDS A FRAMEWORK FOR STATE COMPLIANCE

97. The Special Rapporteur has in the earlier reports touched upon the relevance of indicators as a means of assessing compliance with the provisions of the right to adequate housing. This point has been stressed both in the work of the Special Rapporteur on the realization of economic, social and cultural rights (see E/CN.4/Sub.2/1990/19) and in the report of the United Nations expert seminar on economic, social and cultural rights held in January 1993 (A/CONF.157/PC/73).

98. The development of indicators for each of the economic, social and cultural rights was also stressed by the World Conference on Human Rights in the Vienna Declaration and Programme of Action, as a means of measuring or assessing progress in the realization of human rights. 29/

99. In earlier reports the Special Rapporteur has indicated the importance of elaborating housing rights indicators in the face of the continued use by international financial institutions and Governments of purely market based indicators. This ominous trend continues, with the stress being placed on removing constraints for the market to operate and assessing housing and civic services such as water, electricity and sanitation as priced commodities.

100. The Special Rapporteur acknowledges the changes in the development of indicators that have taken place. For example, in a joint programme, the United Nations Centre for Human Settlements and the World Bank have developed a survey instrument for collecting indicators on housing. Some of the indicators cited are a welcome departure from the past practice of these institutions, and include assessing the scale of squatter housing, the levels of homelessness, the state of female property rights and the scale of evictions. 30/

101. The presence now of these indicators is in the view of the Special Rapporteur not sufficient to satisfy all the imperatives that are linked with the right to adequate housing. The previous reports of the Special Rapporteur have attempted to portray convincingly that the right to housing is subject to violations, that the right is justiciable and that the right carries clear obligations for States across the world. All these dimensions that comprise the complex nature of the right to housing have a solid basis in international human rights law.

102. As indicated in chapter II of the present report, in principle the following rights are indivisible from the right to housing: (a) the right to health; (b) the right to a safe environment; (c) land rights and the right to food; and (d) the right to a livelihood (work). Other rights that are important with regard to maintaining the security of the home are the right to vote, the right to information, the right to gender equality, the right to freedom of movement and to choose one's residence, the right not to be arbitrarily deprived of property and the right to non-discrimination.

103. In the framework presented in the following section, an attempt will also be made to specify the nature of the relationship between the right to adequate housing and congruent human rights.

The principles emerging: Towards a framework for State compliance

104. The framework attempted will endeavour to arrive at indicators that guide the fulfilment of the right to housing. 31/ This section has assumed, therefore, three primary tasks.

(i) To articulate the discussion on the relevance of the housing rights approach by identifying inviolable principles that are rooted in and stem from the fundamental guiding principles that govern the

foundations of international human rights law, in particular its basis of "preserving and promoting the inherent dignity of the human being";

(ii) To use these principles to identify further the relevant core elements (based on core indicators) of the right to housing that in their entirety constitute all the requirements that would need to be met such that the gaining of the right to housing can become possible; and

(iii) to establish a framework, composed of principles, core indicators and core elements that can be used to assess both compliance with the requirements of the right to housing and measure the degree to which violations of the right occur.

105. There are several overriding principles that have a broad basis in international law and guide the attempted framework and indicate the legal recourse that would have to be employed if the requirements dictated by the core elements of these principles are not complied with. These are (a) the rule of law; and (b) non-discrimination and equality. These principles need to be upheld by all concerned authorities in order for the space to be freed for the gaining of the right to housing.

106. The framework attempted, therefore, will adopt the following outline. The identification of the fundamental human rights principle will be followed by (i) the legal basis of the principle; (ii) the core indicators and questions arising; (iii) the core elements; and (iv) the congruent rights related to the housing rights dimensions of the principle identified.

(a) The right to information

107. The "Right to know", even though not always seen as being linked to the right to housing, is in fact a critical aspect of finding and then relating to a place to live in security and dignity.

Core indicator: The state of the right to information:

What percentage of the population, including relevant civic sector organizations, has access to the information required on all resource and planning issues that can have an impact, positively or negatively, on their struggle for the right to housing? Is there sharing of the information on what housing schemes are available and where, what land is available, what are one's rights in terms of water, sanitation and other services, what master plans and other development plans are in the offing, are there any potential hazards from industrial plants and from natural disasters and so forth? What mechanisms are available to the population to facilitate the gathering of such information?

Core element: The right to information;

Legal basis: Article 19, International Covenant on Civil and Political Rights.

(b) Right to a healthy living environment

108. The right to a safe and healthy environment has as its premise the idea that "human beings are at the centre of concerns for sustainable development" and are "entitled to a healthy and productive life in harmony with nature" (Rio Declaration on Environment and Development).

109. The prevalence of adequate housing conditions are intricately linked to the sustenance of a healthy environment. WHO has recognized this symbiotic link and stated that: "Housing - in the broad context of dwellings together with their related neighbourhood and amenities - is the environmental factor most frequently associated with disease conditions in epidemiological analyses, i.e. inadequate and deficient housing is invariably associated with higher mortality and morbidity rates". 32/

110. These are daily dangers and are compounded by the fact that a larger and larger proportion of the world's inhabitants are, owing to the prevalence of particular development policies, being forced to dwell in settlements that are regularly threatened by floods, waterlogging, earthquakes, drought and other natural and man-made disasters.

111. It also continues to be a reality that a significant part of the world's population, particularly in the developing countries (in India alone up to 40 per cent of its population) depends on nature for meeting their subsistence needs (water, fuel, fodder, building materials and so forth). The planned commercialization of these resources and their usurpation to meet demands in urban areas and for export puts in grave danger and additional daily hardship all those struggling for their right to housing.

Legal basis: Clause No. 8 on adequacy in the General Comment No. 4, adopted by the Committee on Economic, Social and Cultural Rights, recognizes this and offers a firm basis for developing indicators. Article 12 of the Covenant on Economic, Social and Cultural Rights.

Core Indicators:

The state of living conditions: what percentage of the population lives in precarious living conditions that are health and life-threatening? How many people in the past five years have suffered from illnesses, diseases and epidemics resulting from the state of the living environment and the denial of essential services (level of sanitation, quality of water supply, level of environmental pollution and so forth)?

The state of the natural resources: what is the state of natural resources essential for meeting housing needs (water, fuel, fodder, biomass-based building materials and so forth)? What mechanisms exist (including programmes for environmental regeneration) that can ensure the continuous availability of these resources for meeting subsistence needs?

Core elements: **The right to equal access to civic services** (especially sanitation, water and electricity);

The right to natural resources (water, fuel, fodder etc.);

The right to a healthy and safe environment (free from pollution of air, water and food);

Congruent right: The right to a safe environment.

(c) Democratic participation

112. If the right to housing is recognized for the social process that it is then it is essential that, beyond the necessary statutory and voluntary right to know (see principle (a) above), conditions need to be created for decentralized local institutions to be formed so that people can play the central role in all local and area-level activities of planning, resources allocation and resource generation.

Legal basis: The entire international legal foundation for the greater devolution of power needs to be examined in this regard.

Core indicators: The state of local government. What is the nature of the political structure? What forms of decentralized decision-making exist? Under whose control is the planning and allocation of housing resources?

Core elements: The right of access to decentralized decision-making bodies; the right to form such bodies (the right to form local community based organizations and the vesting of control over the production, distribution and regeneration of dwelling resources);

Congruent right: The right to vote.

(d) Equality in land relations

113. This principle is well expressed in the following clause from the preamble of the Indian National Campaign for Housing Rights (NCHR) "Housing Rights Bill": "Whereas land has to be treated essentially as of use value and not of exchange value and equitable distribution of land and securing the access of poor households to land are necessary to promote equitable rights to housing". 33/

114. The widespread and growing phenomenon of forced evictions and the resultant dispossession of people and communities makes this principle even more critical to uphold. In India, for example, it has been demonstrated that significantly more people are dehoused annually than there is new housing, including housing for resettlement, being built as a result of State planning.

Legal basis: A particularly useful formulation in this regard is also provided in article 6 of the Declaration on Social Progress and Development and paragraphs 8, 17 and 18 of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights.

Core Indicators:

Security of tenure: Security of homestead rights - the nature of security available; the status of customary rights to land; the status of

common property ownership; the trends in the country of changes in nature of land usage (i.e agricultural to industrial), the impact of this on low-income communities, has this resulted in increased landlessness, homelessness and migration?

The state of evictions: The number of evictions carried out in the past five years; the number of those evicted that received adequate alternate accommodation and/or compensation; the state of rehabilitation in the given country. Is there in existence a national resettlement policy? What groups and causes of displacement does this cover? What entitlements does it provide?

The state of landlessness: Is there a national land policy? Is information available on the status of land quality and usage, land ownership, and land availability?

Core elements: (The right to reside); The right to security of tenure; The right to remain; The right not to be dispossessed and **The right to resettle on demand.**

Congruent rights: Land rights.

(e) Economic parity

115. One of the most blatant and debilitating factors that characterizes the global housing crisis is the perpetuation of unjust and unequal economic allocations in countries between urban and rural settlements and within urban and rural settlements. This is often done with policies favouring the sustenance and growth of pockets of affluence and privilege amidst an even larger growth of inadequately serviced settlements. Such discrimination in the disbursement of civic services has resulted in the prevalence of inadequate living conditions and is compounded by lack of attention to the creation of livelihood opportunities so that people, more particularly in developing countries, create their own living environment, to attain the right to housing.

116. The adherence to the principle of economic parity is especially crucial in a period when more and more Governments are flirting with "free market" polices. This trend is increasingly evident both in countries that are adopting "economic adjustment" policies and in others that are adopting the "enabling the private sector" approach. The overall effect is that there are severe cuts in allocations to the sectors (health, employment, environment and so forth) that affect housing activity. This already adverse situation is compounded by rising land prices and the introduction of payment for civic services. Cumulatively, these shifts in economic policies are having a debilitating effect on the ability of the vulnerable sections of the population to find and retain a secure place to live.

Legal basis: General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, paragraph 8 (c) and the Declaration on the Right to Development, article 8.1.

Core indicators:

Economic parity: What percentage of the national budget is allocated to housing and housing related services? What sections of the population does this reach? Have these allocations been affected in times of economic adjustment or other constraints on the national economy?

State of economic well-being and resource accessibility: To what extent is the housing sector a source of employment? What measures are being adopted to retain and improve the livelihood opportunities created by housing activity? What is the state of asset holdings, material surplus and the investment capabilities of households for the purpose of satisfying the right to housing? What are the mechanisms in place that provide finance to low-income households regarding housing activity? What subsidies exist so that access is possible for these households to building materials, skilled workers and technical support for housing?

Core elements: The right to livelihood; The right to equitable access to international, national and local financial resources; The right to required housing skills, finance and technical support.

Congruent rights: The right to livelihood, The right to equality of treatment.

(f) The maintenance of cultural identity and skills

117. The human right to adequate housing, in its full expression, is a powerful means of gaining political and democratic rights and through that of building cultural identity. Housing is a vital form of cultural expression that utilizes a rich array of skills, tradition and craft and is a vibrant expression of cultural diversity. The many violations to which the right to housing is today susceptible and the growth in the process of dehousing are depriving people of this unique mode of expression. The result is a loss of identity, skills and the sense of "being" and belonging to a place that is so crucial to the survival of the diversity of the world's peoples.

Legal basis: General Comment No. 4, paragraph 8 (g).

Core indicators:

The state of cultural identity and skills: The policies and programmes are under way to promote the survival of diversity in the housing field; the promotion of artisanal involvement; the retention and promotion of local technology and conservation strategies for meeting energy needs.

Core elements: The right to self-expression in all housing activity.

Congruent right: The right to culture.

(g) Gender equality

118. Women bear the primary responsibility for sustaining and maintaining homes and are worst affected by crisis situations in their country's resource

base. In addition, a significant proportion of women, especially in the developing countries, remain essentially homeless, with no clear rights in either their natal or their marital homes. As stated by NCHR it is necessary to take bold and imaginative initiatives to help bring about changes in deep-rooted unjust and exploitative social and cultural practices and processes against women. This issue must be explicitly considered and ensured in all aspects of housing policy, programmes, activity and legislation.

Legal basis:

Some aspects of this principle, regarding the elimination of discrimination against women in the rural areas in relation to their right to enjoy adequate living conditions (housing, sanitation, electricity and water supply), are enshrined in article 14.2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women.

Core indicators and core elements:

Given the high level of participation of women in all matters concerning housing and the particular need to recognize the critical role that they play in these matters, it is crucial that all core indicators and core elements, from security of tenure to local participation to economic parity of women and so forth, take into account both the particularly adverse impact that violations of the right to housing have on women and the contribution that women make in gaining and retaining the right to housing.

(h) The role of the Government

119. If the core indicators cited above are to gain recognition and prove reliable then it is imperative that the role and nature of governance itself be assessed. In this respect the concept put forward by the NCHR of the role of the State being to "guarantee conditions" when combined with the imperative laid down in article 2.1 of the International Covenant on Economic, Social and Cultural Rights of "achieving progressively the full realization" of the rights recognized in the Covenant and the need to immediately "take steps" offers a firm basis for assessing the nature of State governance and the level of compliance with international law.

Legal basis: article 2 (1) of the International Covenant on Economic, Social and Cultural Rights and General Comment No. 2.

Core indicators:

The state of housing as a human right: Does the Government in question view housing as a human right? What is being done to "create conditions" so that people can claim the right to housing? What is the Government's policy on squatters and what is the result? Is the Government "taking steps" for the progressive realization of the right to housing? What remedies for the enforcement of the right exist and what is the result of these mechanisms?

The state of policy formulation: Does the Government view rights such as housing as an "organizing principle" of State policy? Are steps being taken to reconcile different policies (energy, environment, industrial, agriculture and so forth) and halt processes that impinge upon the realization of the right to housing?

The question of illegality: How does the State party define "illegality"? How many people are living in "illegal", "unauthorized" settlements? How many people are homeless?

Core elements: The freedom to exercise the right to housing.

120. In this chapter a human rights approach has been adopted that attempts to convey a holistic perspective in which all the issues identified are interrelated and interdependent. It should be possible, therefore, to assess the degree of compliance of the requirements of each one of the core indicators by juxtaposing them against the entire set of principles identified.

121. Any assault on the space and place where people and communities reside is multidimensional and impacts not only on the house, the four walls and the roof, but as this chapter has shown undermines livelihood and life itself - all the more reason why it has been essential to assume a broad scope for the presentation of principles, core indicators, core elements and congruent rights, as contained in the framework outlined above. It should be possible, therefore, to use the framework presented to assess violations and achievements of all other human rights, in particular economic, social and cultural rights.

122. The framework outlined above, rooted as it is in the principles contained in human rights instruments and the imperative contained therein of viewing housing as a social process, is also useful to counter the industrial and market dominated and dictated policy directives that the field of housing has become hostage to today. The adoption and discussion of this framework is critical because it offers a different vision of State responsibility and accountability from the one being brazenly advocated by international financial and trade institutions and rapidly being adopted by Governments around the world whose painful consequences for the less advantaged are already visible.

V. SUMMARY OF REPLIES RECEIVED

123. From the replies received to his request for information, the Special Rapporteur has been able to identify the following main points.

Legislation

124. Although some countries have indicated that they do not have constitutional provisions on the right to housing, many have enacted important national legislation in the field of housing, such as housing acts, town and village planning acts, owners' and tenants' acts, national workers' housing fund acts and acts on special protection of handicapped persons. Many of these address important aspects of human rights concerns, such as

protection gainst discrimination in housing, security of tenure, protection against arbitrary rent increases, protection of rental housing.

Development strategies

125. In addition many States have included housing in their national development plans or strategies. Especially in countries where profound political changes have occurred, access to land and housing seem to receive preference in the building up of peace and a just and fair society.

Responsibilities

126. In some countries the right to housing has not been embedded in the Constitution. However, States seem to take upon themselves the responsibility for providing housing to those who are not able to do so themselves. Some States specifically indicated that they did so to redress the situation for those who have no access to housing in market conditions. Providing housing for those who cannot manage themselves takes place through rent allowance schemes, rent rebates and measures to enable them to join housing cooperatives. Housing ownership is in many States, particularly in the developed world, subsidized through tax regulations for the construction of rented accommodation and tax incentives for the purchase of owner-occupied property, public subsidies, direct financial benefits, loan finance or grant assistance, publicly subsidized or privately-financed housing construction measures or even through regulation of real estate investment funds. Some Governments, especially those confronted by rural-urban migration, encourage the private sector to provide housing at fair prices, in order to maintain economic growth at a sustainable level.

The poor

127. Only a few replies made specific mention of the (urban) poor who must be provided with decent shelter. Others have emphasized that pending realization of the long-term vision of at least a formal house for each and every household in the country, it must be made possible for people to have access to at least a moderate permanent residential structure with secure tenure and water and sanitary services. Especially in the case of homelessness, Governments have indicated that this can only be remedied with strong measures taken by the public authorities.

Women

128. Only one Government explicitly mentioned its efforts to create wider opportunities for women to participate in housing development.

Housing as a legal right

129. Some Governments explicitly mentioned the need for security of tenure, which would imply a legal claim to a dwelling. One Government mentioned that although housing is seen as a human right it is not considered as a subjective right. In one country a draft constitutional bill not only refers to housing as a fundamental social right but also as a requirement for the full implementation of other fundamental rights.

The United Nations and its specialized agencies

130. Apart from the United Nations body dealing with questions relating to housing (United Nations Centre for Human Settlements) many agencies show a direct interest in the subject of housing. Some see that there is a strong connection between shelter and the quality of life of the world's families. Others make the link between housing, health and fresh water. In the case of financial institutions it was stated that efforts are made to ensure that economic adjustment policies move from generalized to targeted subsidies in the areas of rent and income support. Two agencies have issued policy guidelines on housing to provide their constituencies with a basis for understanding housing policy issues, with the objective of improving housing and living conditions within the framework of human rights. These guidelines not only address the preconditions for a functioning housing market but also the distribution of responsibilities between the various actors in the housing market. To implement housing policies successfully, there is a need for a monitoring system.

131. An intergovernmental body informed the Special Rapporteur that in the context of proposals to improve the substantive contents of the European Social Charter, a proposal has been made to include the right to adequate housing among the proposals relating to protection against poverty and social exclusion.

Non-governmental organizations

132. The replies of the NGOs show a combination of the Governments' practices and the concerns expressed by the United Nations bodies: housing is seen as a universal right, which implies States' responsibility in its recognition and implementation; housing is an important part of development strategies or social policies; housing, including clean water, protects children from further exploitation; women suffer the greatest hardships from inadequate housing and living conditions. They also devote great energy to improving housing and community conditions. The elimination of legal and social restrictions on women's access to credit and land would help the full realization of women's rights to housing.

133. The replies show that although many of the States do not consider housing rights to be of such paramount importance as to be incorporated in their Constitutions, many have passed legislation whereby they take on the legal obligation to protect and promote adequate housing. However, it seems that housing is seen as a commodity and a basic need rather than as a human right and that it falls within the scope of policy formulation by each incumbent Government.

134. The trend among States appears to be to initiate policies which they hope will encourage private investors with the consequence that markets will be able to meet the demand. But information obtained from other sources shows that private investment may only serve the requirements of a small affluent section of society - the poor and even the middle classes remained untouched by this construction activity. In the view of the Special Rapporteur, unless

social housing is taken in earnest by the State in pursuance of its obligation to promote housing rights, large segments of the population will continue to be denied their human right to adequate housing.

135. The Special Rapporteur is disappointed to find that there is absolute inaction on the part of Governments with regard to creating special conditions and wider opportunities for women to participate in housing strategies. Women, who constitute half of the population, have borne the main brunt of the absence of adequate resources and opportunities for exercising this right. The absence of special consideration for women shows that male domination complexes are still continuing in our society.

136. It has struck the Special Rapporteur that within the United Nations system there seems to be serious concern for housing. Although it may not be seen as a human right by the majority of those which replied, many of the agencies place housing in a wider perspective by linking it to the quality of life in general and health in particular. This, in the view of the Special Rapporteur, highlights in practice the inter-interdependence of all economic, social and cultural rights. The Special Rapporteur would therefore welcome a more forthright approach from the United Nations agencies regarding incorporating the principles of human rights as contained in the international instruments more explicitly in their work.

137. Finally, the Special Rapporteur finds it encouraging to see that non-governmental organizations are emphasizing States' responsibility in keeping with obligations that arise from the right to housing and appreciates the importance they attach to focusing on women's housing, as well as that of the poor.

VI. THE DRAFT CONVENTION ON HOUSING RIGHTS: SOME DEVELOPMENTS

138. In paragraph 5 of its resolution 1993/38 the Subcommission requested the Special Rapporteur to examine the necessity of adopting an international convention or declaration on the right to adequate housing.

139. In his second progress report, the Special Rapporteur included a draft international convention on housing rights (E/CN.4/Sub.2/1994/20, chap. IX). In that report the Special Rapporteur expressed the importance of a debate on the draft convention and stated that he would appreciate receiving detailed comments on the draft from all concerned parties, be they States, United Nations bodies and agencies or non-governmental organizations.

140. At its forty-sixth session, the Subcommission discussed the second progress report and adopted resolution 1994/36, in which it took note with interest of the draft international convention on housing rights as contained in the report and invited States, United Nations specialized and other agencies, international and regional intergovernmental organizations and non-governmental and community-based organizations to provide the Special Rapporteur with their views and comments on all aspects of the right to adequate housing, in particular the draft international convention on housing rights, for consideration in the preparation of his final report.

141. The Special Rapporteur has been given to understand that no note verbale following from the second progress report, including the draft convention, was sent out to the parties indicated. There is thus a total absence of any formal response on the various aspects of the draft convention. The Special Rapporteur would, however, like to record his appreciation at the receipt of the results of an international conference on housing rights held in February 1995 by the Habitat International Coalition. The conference held a special workshop to debate the draft convention contained in the Special Rapporteur's second progress report. Many useful suggestions resulted from this workshop and they have been provided to the Special Rapporteur. The American Society of International Law has also made available to the Special Rapporteur an incisive study on a possible convention. 34/ It is, however, obvious that in the absence of any comments from States or organizations it would be premature to comment upon the need for the contents of the Convention, or to provide the Subcommission with a revised draft housing rights instrument.

142. The Special Rapporteur would, therefore, request that the draft convention be sent without delay to States, United Nations bodies and agencies and non-governmental organizations as indicated in resolution 1994/38. Only thereafter, would it be possible for the Special Rapporteur to attempt to discuss the various aspects and nuances of the draft convention for further consideration by the Subcommission and to provide the Subcommission with a new draft text at its forty-eighth session.

143. The Special Rapporteur strongly believes that a comprehensive housing rights instrument, would be an important and beneficial step towards facilitating the full satisfaction of the right to adequate housing. The Special Rapporteur urges the Subcommission to continue to pursue its deliberations and action on developing standards on this right. To do so would provide an unequivocal signal that this body approaches all rights, including economic, social and cultural rights, in an equitable manner. One wholly appropriate and timely means of doing so would be to lend its insight, expertise and support to the elaboration and eventual adoption of a new housing rights text. If the Subcommission so wishes, the Special Rapporteur will make himself available to coordinate and expand these efforts.

VII. CONCLUSIONS

144. Throughout his mandate, the Special Rapporteur has sought to identify, clarify and elaborate the legal sources of the human right to adequate housing under international law with a view to promoting the full realization of this right for all. The reports submitted to the Subcommission have shown beyond any doubt that this right exists widely throughout the body of international human rights law, as well as within a large number of national constitutions and domestic legislation. While specifics may differ among States, there can be no doubting that every nation has one or another degree of obligation to respect, protect and fulfil this right under law.

145. In many respects, this is perhaps the most important conclusion to be drawn from this study for it profoundly indicates that far too few Governments and other influential actors have acted upon the fundamental human right to adequate housing in a manner sufficiently reflecting the obligations

associated with that right. While we must recognize both the inherent equality of all nations, peoples and citizens under international law in conjunction with our bountiful differences, which should only enrich a tolerant humanity, housing rights must be seen to transcend political distinctions of left and right, North and South, urban and rural areas, women and men, young and old and any other categorization. Housing rights belong to every child, every woman and every man and must be understood and acted upon with the same conviction, the same fortitude and the same determination everywhere.

146. An understanding of the clearly universal relevance and applicability of the human right to adequate housing should move all of us to do more to ensure that all people, everywhere, are guaranteed their legitimate right to housing as defined under international human rights law. Governments must do more, the United Nations must do more, the financially well-endowed must do more and civil society must do more; do more to halt housing rights violations, do more to protect the weakest and most vulnerable among us, do more to ensure the basic necessities of life and livelihood to all and do more to find and grasp the most effective means of guaranteeing an adequate place in which to live in peace, security and dignity.

147. Achieving this right for all within the foreseeable future is by no means beyond our common reach. If the world as a whole remains inadequately housed this will not be due simply to a lack of resources, deficient finances or insufficient land or materials, as is so often argued today. Rather, it will be a continuation of the misguided status quo, a tragically inequitable distribution of income and resources within and between nations, an attachment to the fiction of the all-providing market, the treatment of housing as a dispensable commodity and the ongoing marginalization of economic, social and cultural rights that will be responsible for creating conditions such that more than 1 billion persons continue to languish without an adequate home, and live their lives with increasingly less likelihood of ever attaining their housing rights.

148. In his four reports the Special Rapporteur attempted to identify some of the conceptual, political and legal hurdles which have obstructed and continue to obstruct the enjoyment of this right by some one fifth of humanity. Some of the key causes of the global housing crisis were distinguished, as were a series of common misperceptions of housing and housing rights. The identification of these contributing factors to the denial of the human right to adequate housing were outlined in order to discern constructive ways and means of ending housing rights violations and of promoting the realization of this right. Indeed, viable solutions are both realistic and attainable.

149. The past several years have witnessed some important advances in the global struggle for housing rights: new housing rights legislation has appeared in several countries; some new or revised national Constitutions have enshrined the right to adequate housing; resolutions reaffirming this right have been adopted by several United Nations bodies; popular campaigns, often eloquently demanding housing rights, have emerged in nearly all of the world's regions; significant court rulings have protected housing rights, in the process creating important jurisprudence from a diverse range of adjudicating bodies, both internationally and nationally; some planned or pending housing

rights violations were prevented before they occurred; an enriched housing rights literature has been produced; and, to a degree, we can note a nascent housing rights culture within th human rights community. These small yet meaningful strides are welcomed by the Special Rapporteur and it is sincerely hoped that future years will see the emergence of much expanded attention to this long under-emphasized human right by all relevant actors.

150. Despite these steps forward, how much has really improved during the past few years as far as housing rights are concerned? Has the world progressed or regressed? Are more people in full possession of their housing rights than ever before or have these rights been too often neglected or forgotten?

151. The Special Rapporteur deeply regrets that housing rights have unjustifiably remained a sadly empty promise for far too many people. In a growing number of countries more homes are actually destroyed each year than are built. The numbers of homeless persons continues to grow, whether in the streets of Brussels, Bombay, Budapest, Buenos Aires or Bangkok. Forced evictions continue to displace brutally many millions of persons from their homes year after year. So-called development projects are all too often praised and prioritized without critique, even when human rights violations take place in the process. National budgets devoted to housing those most in need continue to decline and public expenditure on housing for the upper or middle classes all too often take precedence over homes for the poor. Unmerciful armed conflicts in dozens and dozens of nations have led to the massive destruction of homes and properties, and to millions of blameless residents being made homeless and forced to flee their dwellings and lands either as internally displaced persons or refugees. Blatant discrimination continues to be directed at certain ethnic, racial, indigenous, national and other groups and peoples, in the process actively denying them their lawful rights to dwell in peace and security. The slums of the world continue to grow, seemingly without end, and preventable deaths due entirely to man-made deprivation, destitution and abysmal housing and living conditions unnecessarily take away the lives of tens of millions of persons every year. More and more, women, children, minorities, the poor and the marginalized are effectively (and literally) left by the wayside of what is cleverly but callously passed off as "progress" and "development".

152. Virtually everyone reading this document will have no visible housing rights difficulties or housing discomforts to report. Indeed, those who are well housed - those of us who enjoy our housing rights - all too often fail to acknowledge our fortunate circumstances. We know where we will sleep tonight. We know where we will live tomorrow. We know where we will enjoy our rest and spend time with our friends and families. We know we will be protected from the oncoming storm and that our homes most likely protect, rather than harm, our health. We know we have somewhere to call home. We have somewhere to dwell. If we choose, we can simply take solace in our good fortune, enjoy it, improve it and leave it at that. However, to relax in our safe and comfortable dwellings - with our housing rights met - while a growing portion of humanity lives in perpetual insecurity and desperation might neither be the most ethical nor the wisest of paths to pursue.

153. The terrain is immense, the problems extraordinary and the millions affected are desperately yearning for interventions that will give them the

chance to empower themselves. The housing rights approach is perfectly suited to tackling the gross violations that people facing inadequate housing and living conditions are at present confronted with. The Special Rapporteur's reports have attempted to show amply that the right to adequate housing is a basic human right, constituting a cornerstone right in the struggle being waged for survival and livelihood by people and communities across the world. Much more remains to be done and ways and means must be found by the United Nations to continue and expand the focus on this critical human right. The United Nations human rights programme must play a leadership role in such endeavours. In one sense the debate has really only just begun. It is the sincere hope of the Special Rapporteur that his contribution has highlighted both the substantial loss of dignity, skills and identity resulting from continued violations of the right to adequate housing and the promise inherent in this right as an empowering process for people and communities everywhere.

154. The conception of housing rights permeating the reports of the Special Rapporteur offers an alternative pedagogy, at once indigenous and modern, existential and liberating. The housing rights process provides a continuum between community, nature and culture, embodying the assertion of a space and place rooted in the common human urge to be able to dwell somewhere in security and dignity. In the currently turbulent flux threatening to overtake issue-based struggles, any community empowered to assert its right to livelihood, housing and a secure existence is that much better off. The human right to adequate housing offers one such path, taking on a powerfully unifying meaning if it is recognized as a catalyst for social transformation - one that cuts across class, racial and ideological barriers.

VIII. RECOMMENDATIONS

155. The Special Rapporteur would like to conclude with a series of recommendations directed to a wide range of actors, each of whom can take meaningful steps to promote and ensure the full enjoyment of housing rights for everyone. The Special Rapporteur is convinced that the issues elaborated in this section are attainable and, indeed, crucial, if the right to adequate housing is to provide the necessary protection to the large part of humanity that is denied that right.

156. The following recommendations are directed to: States; States parties to the Covenant on Economic, Social and Cultural Rights; the United Nations human rights programme; the human rights treaty bodies; regional human rights organs; United Nations specialized agencies; other United Nations bodies; regional organizations; world conferences; and non-governmental and community-based organizations.

1. States

157. In accordance with resolutions adopted by the General Assembly and a wide range of relevant United Nations bodies, and as reaffirmed by the World Conference on Human Rights in the Vienna Declaration and Programme of Action, States which have not done so should ratify all international human rights treaties enshrining the right to adequate housing.

158. States should seek to reaffirm consistently the fundamental nature of the basic human right to adequate housing as recognized throughout international human rights law. Simultaneously, States should refrain from drawing up and adopting policies that arise from viewing housing as exclusively a "need" or "aspiration" or in any way detracting from the human rights dimensions of the right to adequate housing.

159. When addressing housing rights issues within any international forum, States should ensure that approaches are taken which are fully consistent with the international legal status of this right. In this regard, States should ensure that any statements made at international gatherings by delegations on behalf of their respective national Governments do not conflict with the fundamental nature of the human right to adequate housing. Specifically, States should ensure that positive action is taken regarding housing rights within the context of the Habitat II World Conference on Human Settlements, scheduled for June 1996, and that no retrograde steps are taken regarding these rights.

160. States parties should consider undertaking nationwide education campaigns promoting greater public awareness (both within the Government and throughout civil society) of the provisions of all international instruments that contain the right to housing and related rights.

161. States should seek to fully integrate the contents of General Comment No. 4 on the right to adequate housing (art. 11.1 of the Covenant on Economic, Social and Cultural Rights) into the relevant national legislative and policy domains.

162. With a view to clarifying, refining and strengthening the human right to adequate housing, all States proceeding with the elaboration of new, revised or amended national Constitutions, should give due attention to including housing rights provisions in these texts. The same principle should apply during the legislative process regarding any new or revised laws with a bearing in any way on the full realization of this right. In this regard, the adoption of comprehensive national housing rights acts should be positively contemplated by States.

163. Relevant national ministries, including housing, planning, environment, social welfare, industry, finance and others, in carrying out policy and implementing statutory duties should ensure that the housing rights obligations of the Government are fully complied with.

164. With a view to strengthening international legal standards relevant to the human right to adequate housing, States should give serious consideration to the possible adoption of an international convention on housing rights under the auspices of the United Nations, as addressed in the second progress report of the Special Rapporteur (E/CN.4/Sub.2/1994/20, chap. IX).

165. As far as national legislation, policies, programmes and practices are concerned, States should, at a minimum, ensure that no violations of the right to adequate housing such as those elaborated in the Special Rapporteur's first progress report (E/CN.4/Sub.2/1993/15, para. 144), are allowed to take place.

In the event of any housing rights violations, States should undertake all necessary measures to halt any further violations and bring to justice any person(s) responsible for such infringements.

166. In accordance with the undisputed acceptance under international human rights law that forced evictions constitute "gross violations of human rights, in particular the right to adequate housing", States should scrupulously avoid sponsoring, tolerating or actively carrying out forced evictions of any type not in conformity with international human rights law.

167. Local and municipal governments, as public bodies, should pursue policies which are in full conformity with the international legal obligations of the national Government. In particular, local and municipal governments should refrain from sponsoring, tolerating or carrying out forced evictions not in conformity with international human rights law.

168. Development projects that lead to evictions should not be initiated until a full resettlement policy is in place. Complete rehabilitation, in accordance with international law, must be ensured, taking into account the needs of special groups - women, children and the aged. Rehabilitation policies must ensure, in keeping with the provisions of the right to housing, basic amenities, services and livelihood opportunities.

169. States should ensure that women are guaranteed full equality of treatment regarding any and all aspects of the human right to adequate housing, with particular attention being paid to rights to land and/or property ownership and inheritance that influence decision-making processes.

170. The Special Rapporteur has repeatedly stressed that security of tenure is a cornerstone element of housing rights. States should, therefore, within the shortest possible time-frame, confer legal security of tenure to all persons and communities currently lacking such legal protection. In this regard, due attention should be given to regularizing human settlements where rights to security of tenure are not in place.

171. States that have not done so should prepare detailed and public assessments of the material reality of housing conditions and trends in their countries such that accurate housing policies and programmes can evolve. One manner of achieving this goal is through the periodic preparation of status reports on the state of housing and living conditions throughout the country. In the preparation of all reports and studies reflecting the state of housing and living conditions, the Special Rapporteur urges States to utilize indicators based on the human right to adequate housing. 35/

172. In view of the continuing and massive denial of the right to adequate housing, all States should undertake clearly targeted and concerted action towards eradicating homelessness and inadequate housing conditions in a manner fully consistent with the right to adequate housing as recognized under international human rights law. In this respect, serious consideration should be given by States to the development of national housing rights strategies designed to ensure the enjoyment of housing rights by everyone within the shortest possible time-frame.

173. When developing national housing rights strategies, States should include reference within the strategies to:

(a) How most effectively to limit land and housing speculation in the interests of society-wide enjoyment of housing rights;

(b) The necessity of regulating the market in the manner which most appropriately ensures the full realization of housing rights;

(c) The need for extensive public debate on the strategy prior to adoption which includes the full participation of civil society;

(d) The imperative of the strategy being based on an accurate assessment of the scale of the housing problem in the country, including a clear prioritization to the housing rights of the poorest sectors of society; and

(e) Including within the strategy issues relating to accessible housing finance consistent with the proportion of the population that is yet to realize its housing rights.

174. In terms of implementing national housing rights strategies, which need to be linked to national housing rights acts, States should pursue the creation of statutory authorities on housing for the poor. These authorities should include the representation of NGOs and community-based organizations. All parties, public and private, should be made accountable to this authority. In addition, States should seek to incorporate in the mandate of existing human rights commissions mechanisms designed to prevent, halt or rectify violations of housing rights.

175. All relevant national judiciaries, tribunals, administrative organs and other adjudicating bodies should consider the International Covenant on Economic, Social and Cultural Rights and all other related international obligations generally, as interpretive aides in clarifying and enforcing domestic laws and they should ensure that domestic law is interpreted and applied in a manner that is consistent with that International Covenant and any other relevant ratified treaty.

176. States should give due regard to the provisions contained in article 27 of the Vienna Convention on the Law of Treaties, which provides that States parties may not invoke domestic law as an excuse for avoiding international obligations.

177. States should fully recognize the indispensable role played by civil society, including non-governmental and community-based organizations, throughout the housing process. Consequently, their contributions to the realization of housing rights should be recognized, promoted and ensured by States.

178. To facilitate the implementation of the recommendations that have been outlined above States may consider adopting the right to housing as an organizing principle of State policy and developing a hierarchy of policies that give due prominence to all economic, social and cultural rights.

2. States parties to the International Covenant on Economic, Social and Cultural Rights

179. States parties should undertake to carry out systematic legislative and policy reviews with a view to harmonizing laws and policy with the obligations arising from the provisions in the Covenant. States parties should duly alter any domestic laws clearly incompatible with the housing rights provisions of the Covenant, and should take it fully into account in adopting any new legislation.

180. In this respect, States parties should take into account the fact that many areas of legislation and policy, above and beyond those relating exclusively to housing, have a major bearing upon the degree to which the right of everyone to adequate housing is actually realized.

181. States parties should arrange for training programmes for the judiciary relating to the obligations arising under the Covenant with a view to ensuring the full applicability of the Covenant within domestic legal and judicial systems. Moreover, States parties should ensure that legal remedies relating to complaints based on the rights guaranteed in article 11.1 of the Covenant are available to everyone.

182. When the Committee on Economic, Social and Cultural Rights issues concluding observations to States parties that relate in any manner to the right to adequate housing established in article 11.1, States parties should duly implement any recommendations made to them by the Committee and take fully into account any other views concerning article 11.1 made by the Committee, in accordance with the basic principles of international law.

183. States parties should, in accordance with articles 16 and 17 of the Covenant, submit their reports to the Committee on time. Similarly, States parties should utilize the guidelines prepared by the Committee as a means of organizing their reports. All States reports should be widely publicized within the country prior to their consideration by the Committee. For this purpose the reports should be made directly available to NGOs and the civic society as a whole.

184. Governmental employees from any relevant ministry should be required to receive training and education relating to the housing rights provisions of the Covenant and the State obligations arising from the recognition of these rights.

185. States parties should support the adoption of an optional protocol to the Covenant providing individuals with the right to submit complaints alleging non-compliance with the Covenant to the Committee on Economic, Social and Cultural Rights for its consideration. Once adopted, States parties should ratify the protocol without reservation.

3. The United Nations human rights programme

186. **The Subcommission on Prevention of Discrimination and Protection of Minorities** should: (a) recommend that the Commission on Human Rights appoint a special rapporteur on housing rights; and (b) request the Secretary-General

to compile all comments received from States, United Nations agencies, non-governmental organizations and others concerning the draft convention on housing rights contained in the second progress report and the indicators contained in the final report of the present Special Rapporteur.

187. **The Working Group on Indigenous Populations** of the Subcommission should be requested to devote sufficient attention to the housing and land rights of indigenous peoples, taking into account the special nature of these rights as far as indigenous peoples are concerned.

188. **The Working Group on Communications** of the Subcommission should be requested to look into complaints alleging gross and systematic violations of housing rights provisions under international law. Particular attention should be paid in this regard to instances of mass forced evictions, mass deportations, land confiscation, racial discrimination in the housing sphere, significant increases in homelessness or inadequate housing conditions, and so forth.

189. **The Commission on Human Rights** should, considering the current absence of an explicit Commission mechanism designed to monitor, promote and protect the human right to adequate housing, appoint a special rapporteur on housing rights. All country rapporteurs of the Commission on Human Rights are encouraged to examine housing rights violations within the framework of their particular mandates.

190. **The Special Representative of the Secretary-General on internally displaced persons** should examine the fundamental relationship between the right to adequate housing and the rights of internally displaced persons, both as this right relates to the right not to be displaced as a consequence of projects and other alleged developmental programmes without provision having been made for adequate relocation and rehabilitation, and as it pertains to persons already internally displaced.

191. **The High Commissioner for Human Rights** should, in view of the indivisibility and interdependence of all human rights, more intensively promote economic, social and cultural rights, and should undertake concrete measures towards preventing violations of the human right to adequate housing as well as redressing past violations. In addition, the Special Rapporteur urges the High Commissioner to give specific attention to forced evictions, development-based displacement, indigenous peoples and forced evictions, and to following up any relevant concluding observations of the Committee on Economic, Social and Cultural Rights concerning these matters, where applicable.

192. **The Centre for Human Rights** should, in the context of its advisory services programme, include in needs assessment reports explicit references to matters and issues relating to the human right to adequate housing. In this respect, expertise should be developed within the advisory services programme on practical measures which could be promoted towards the full realization of the human right to adequate housing in States receiving advisory services. Additionally, the Centre should consider publishing the four reports of the Special Rapporteur in a single document in the relevant publication series.

4. The human rights treaty bodies

193. **The Committee on Economic, Social and Cultural Rights** should consider the development of housing rights indicators revealing and clarifying the core contents of the right to adequate housing. The Committee could also consider adopting a general comment on forced evictions.

194. **The Committee on the Elimination of Racial Discrimination** should consider adopting a general recommendation on the right to adequate housing as enshrined in article 5 (iii) (e) of the International Convention on the Elimination of All Forms of Racial Discrimination with a view to clarifying the obligations of States parties to the Convention in this respect.

195. **The Committee on the Elimination of Discrimination against Women** should consider adopting a general recommendation on women and housing rights as this relates to the provisions of article 14.2 of the Convention on the Elimination of All Forms of Discrimination against Women, with a view to clarifying the obligations of States parties to the Convention in this respect.

196. **The Committee on the Rights of the Child** should, in the light of resolution 1994/8 on children and housing rights of the Subcommission on Prevention of Discrimination and Protection of Minorities and Commission on Human Settlements resolution 15/14 (1995) on concrete measures towards the full realization of children's housing rights, look into the housing rights aspects of the Convention on the Rights of the Child in its examination of reports submitted by States parties and in its interpretive work on the Convention on the Rights of the Child.

197. **The Human Rights Committee** should, in view of the indivisibility and interdependence of all human rights, consider enhancing its attention to the rights enshrined in the International Covenant on Civil and Political Rights which have a direct bearing upon the enjoyment of the human right to adequate housing, both in the context of examining States reports and with regard to complaints received pursuant to the Optional Protocol to the Covenant. 36/

5. Regional human rights organs

198. The regional human rights organs, in particular **the European Court of Human Rights, the European Committee of Independent Experts, the African Commission on Human and People's Rights** and **the Inter-American Commission and Court of Human Rights** should consider adopting interpretive documents elaborating the content and implications of housing rights norms relevant to the organ in question, as established in the legal texts these organs are responsible for overseeing. While considering complaints on issues relating to housing rights these organs should take into account legal developments on those rights as reflected in the relevant instruments of international human rights law.

6. The United Nations specialized and other agencies

199. Many, if not most, of the United Nations specialized and other agencies can play a constructive role in the pursuit of the human right to adequate housing. Indeed, the International Covenant on Economic, Social and Cultural

Rights clearly foresees a role for four specialized agencies in the implementation of the Covenant. All relevant United Nations agencies should seek to establish, in accordance with their specific areas of competence and expertise, measures clearly designed to promote the human right to adequate housing.

200. The Special Rapporteur would encourage all United Nations agencies, when in possession of information relevant to the enjoyment or non-enjoyment of the human right to adequate housing, to submit such information to the appropriate United Nations human rights mechanism, in particular the Committee on Economic, Social and Cultural Rights, and to the High Commissioner for Human Rights.

201. **The International Labour Organization (ILO)** should give consideration to revising ILO Recommendation No. 115 on worker's housing in order to bring relevant ILO standards on housing into line with the current content and interpretation of the human right to adequate housing as established under international law.

202. **The United Nations Educational, Scientific and Cultural Organization (UNESCO)** should study comprehensively the cultural aspects of the human right to adequate housing and the role played by economic and development policies at national and international levels that have an impact on the skills and identities of people. UNESCO could also initiate a study on the state of national policies and programmes concerned with the survival of diversity in the housing field and the retention of local technology and conservation strategies for meeting energy needs necessary for the protection of housing rights.

203. **The World Health Organization (WHO)** should continue to expand its attention to the interrelationships between housing and health and develop relevant indicators on the right to health and the right to housing. The WHO Health Principles of Housing are a useful starting point for this initiative. 37/

204. **The Food and Agriculture Organization (FAO)** should, in keeping with its Constitution, and the provisions of the International Covenant on Economic, Social and Cultural Rights, take effective measures to promote the reform of agrarian systems and of access to land, including the gaining of land rights by smallholders and marginal farmers, with a special focus on the rights of women in these groups. In the pursuit of more equitable land distribution and genuine land reform efforts, FAO should seek to ensure the provision of sustained security of tenure for all landless peasants and farm workers. FAO should consider generating international conventions along these lines, following the example set by ILO regarding people's livelihood opportunities.

205. **The United Nations Centre for Human Settlements (UNCHS) (Habitat)** should vigorously pursue the full implementation of the UNCHS housing rights strategy (HS/C/15/INF.7), recognizing the importance of generating United Nations-wide support and assistance towards this end. In this respect, the United Nations Centre for Human Settlements should develop expertise relating to the human right to adequate housing, with particular attention being devoted to pursuing active measures geared towards the implementation and enforcement of this

right. With specific regard to the World Summit on Human Settlements (Habitat II), both the Commission on Human Settlements and the United Nations Centre for Human Settlements (Habitat) should conscientiously pursue the reaffirmation and strengthening of existing sources of the human right to adequate housing as contained in, inter alia, the Vancouver Declaration on Human Settlements (1976) and the Global Strategy for Shelter to the Year 2000 (1988) and Commission on Human Settlements resolution 14/6 of 5 May 1993, entitled "The human right to adequate housing".

206. **The United Nations Children's Fund (UNICEF)** should, in the light of resolution 1994/8 ("Children and housing rights") of the Subcommission on Prevention of Discrimination and Protection of Minorities and resolution 15/14 (1995) ("Concrete measures towards the full realization of children's housing rights") of the Commission on Human Settlements, consider devoting attention to the housing rights of children through the appointment of one or more officials with exclusive competence in this area. Specific and expanded attention should be paid by UNICEF to the housing rights of street children and other children being forced to live in especially vulnerable conditions.

207. **The United Nations Research Institute for Social Development (UNRISD)** should seek to expand its intensive research programme to include more extensive analysis on human rights issues, including housing rights, relating to its existing programmes on structural adjustment, participatory democracy, indicators, ethnic conflict and social integration.

208. **The Office of the United Nations High Commissioner for Refugees (UNHCR)** could consider devoting attention to the fulfilment of housing rights, as this is one of the fundamental social-economic rights to be accorded to refugees and internally displaced persons. Such a step would be in conformity with article 21 of the Convention relating to the Status of Refugees and its 1967 Protocol. UNHCR should explore whether housing rights violations could constitute grounds for obtaining refugee status and whether such violations constitute a basis for well-founded fear of persecution.

209. **The United Nations Development Programme (UNDP)** should include housing rights matters in its Human Development Index and devote substantially more attention than at present to the housing rights issues relevant to its development mandate. Likewise, UNDP should expand its financial assistance to projects designed to promote the enhanced enjoyment of the human right to adequate housing.

210. **The World Bank** should ensure that any policy, practice, project or programme it supports is not or will not result in any violation of the human right to adequate housing. Specific attention should be paid in this respect to any projects involving the involuntary resettlement of persons from their homes and/or lands. This institution should not in any instance finance projects involving forced evictions of any size, recognizing its dismal record in such practices since its inception. The World Bank should respect articles 55 and 56 of the Charter of the United Nations, which inter alia apply to itself, and ensure that it in no manner compromises, either actively or passively, the human rights obligations of States to which it provides financial assistance. Regarding the World Bank's housing policy, a more

concerted effort should be made to apply a housing rights approach to such matters, rather than relying so heavily on the provision of housing by the market.

211. **The International Monetary Fund (IMF)** should respect articles 55 and 56 of the Charter of the United Nations, which inter alia apply to itself, and ensure that it in no manner compromises, either actively or passively, the human rights obligations of States to which it provides financial assistance. In its pursuit of structural adjustment programmes and social safety nets, IMF should ensure that it does not in any way encourage or assist States to violate their existing human rights obligations under international human rights law.

212. **The United Nations Volunteers (UNV)** should provide training and volunteer efforts on housing rights issues in the implementation of its mandate.

213. **The United Nations Statistical Division** should develop indicators on housing rights, as proposed in this report by the Special Rapporteur, and include an assessment of the status of housing rights in its documentation.

214. **The United Nations Institute for Training and Research (ITAR)** should provide training courses on the human right to adequate housing, with a view to promoting the full realization of this right. Where current programmes exist, and where relevant, housing rights modules could be incorporated.

215. **The Committee on Human Settlements of the Economic Commission for Europe (ECE)** should examine enjoyment of the human right to adequate housing within member countries of ECE.

216. **The Economic and Social Commission for Asia and the Pacific (ESCAP)** should develop effective mechanisms to monitor State compliance with existing and future housing rights obligations as enshrined in international law, in view of the current absence of a regional human rights treaty in this region.

7. Other United Nations bodies

217. **The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories** should devote substantial attention to ongoing violations of the right to adequate housing, particularly those relating to land confiscation, house demolitions, forced evictions, housing-based discrimination and the illegal establishment of Israeli settlements.

218. **The Commission on Sustainable Development** should seek to apply faithfully the relevant provisions contained in chapter 7 of Agenda 21 and incorporate a housing rights approach in the cross-sectoral programme on human settlements. Particular attention should be paid to ensuring State compliance with chapters 7.6 and 7.9 (b) that recognize the right to housing and the need for legal provision of people against eviction from their homes or lands.

219. **The Commission on the Status of Women** should consider expanding its work on the discrimination faced by women in their living environment in urban

areas (E/CN.6/1994/3) to rural areas. The Commission could consider adopting as a priority theme the impact on women of evictions and other violations of housing and land rights.

8. Regional organizations

220. **The Organization of American States (OAS)** should pursue the amendment of the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights to include an explicit right to adequate housing, consistent with the fact that most OAS member States have recognized this right in their national Constitutions and considering that the overwhelming majority of OAS member States have ratified other international human rights treaties containing this right. In the interim period, all OAS member States which have not yet done so, should speedily ratify the Additional Protocol. OAS should also seek to expand substantially its activities on economic, social and cultural rights, with due reference to the human right to adequate housing.

221. **The Organization of African Unity (OAU)** should develop programmes devoted to the full realization of the human right to adequate housing in OAU member States and consider amending the African Charter on Human and People's Rights to include an explicit right to adequate housing.

222. **The Council of Europe** should ensure the inclusion of the human right to adequate housing in the to be amended European Social Charter, and, to the extent possible, request the European Commission on Human Rights to include housing matters within its areas of competence.

223. **The Organization for Economic Cooperation and Development (OECD)** should, in the framework of the Development Assistance Committee, seek to promote the full realization of the human right to adequate housing.

224. **The Organization for Security and Cooperation in Europe (OSCE)** should devote expanded attention to the housing rights clauses in OSCE texts, recognizing the potential instability which can result from widespread denials of housing rights.

9. World conferences

225. **The Fourth World Conference on Women,** to be held in Beijing in September 1995 should include the reports of the Special Rapporteur among the documents to be made available to the participants. The Summit should include in its conclusions and recommendations explicit targets relating to the full realization of the right to adequate housing for all women.

226. **The United Nations Conference on Human Settlements (Habitat II)**, to be held in June 1996, should reaffirm the fundamental nature of the basic human right to adequate housing, in conformity with Commission on Human Settlements resolution 14/6 of 5 May 1993, and designate specific measures geared towards the full implementation, enforcement and enjoyment of the human right to adequate housing before the year 2000.

10. Civil society including non-governmental and community-based organizations

227. Throughout his reports the Special Rapporteur has recognized the catalytic role played by civil society and non-governmental and community-based organizations in bringing housing rights to the forefront of concern and action at local, national and international levels. The Rapporteur must place on record his deep appreciation of the assistance accorded to him, especially by way of information received from these groups. Although the work of these groups continues to be indispensable for progress on developing a wide acceptance of housing rights and on these rights being understood in a larger canvas, a number of additional practical strategies need to be followed.

228. The following recommendations apply to a range of organizations at the national, regional and international levels: mass organizations, trade unions, tribal and indigenous organizations, community-based organizations, women's groups and children's groups. Where necessary the Special Rapporteur has indicated if particular recommendations apply to particular groups. The recommendations are divided into the following categories: (a) Documentation, translation and distribution; (b) Media and publication uses; (c) Legal uses; (d) Policy and budgetary uses; (e) Utilizing the United Nations; (f) Political and strategic uses; (g) Campaigning, mobilizational and networking uses; and (h) Academic and educational uses. The recommendations are based upon the wide recognition of the right to housing in international law 38/ and on the educational work of leading international organizations on economic, social and cultural rights. 39/

(a) Documentation, translation and distribution

229. The extensive sources of housing rights should be as widely publicized and distributed throughout all levels of society, in efforts aimed at achieving wider public recognition and awareness of these important documents.

230. All groups are urged to translate the relevant texts into their local languages and to prepare leaflets, brochures and booklets for wide distribution. Most of the United Nations documents are available in the six official United Nations languages: Arabic, Chinese, English, French, Russian and Spanish.

231. Groups are urged to document violations of housing rights. The indicators contained in chapter V of the present report can be used for this purpose.

(b) Media and publication uses

232. Full copies of the housing rights texts could be published in appropriate journals, magazines, newspapers, books and other written media. If possible, these could be accompanied by short articles explaining the texts, relating these to the specific framework and situation of the country.

233. Groups familiar with human rights work may want to initiate training programmes for media persons on economic, social and cultural rights, so that the media uses more and more the principles, concepts and instruments of human rights to assess the state of human rights in their areas.

234. Groups may use media contacts to get journalists in their areas to undertake investigative and in-depth articles/features on the texts and responsibilities of Governments outlined in the Special Rapporteur's first progress report.

235. Legal activists could be requested to publish the texts, along with an analysis of their relevance to the legal situation in the country, in law journals and elsewhere.

236. Relevant Ministries (law and justice, housing and urban development, environment and others) could be informed of all relevant housing rights provisions, with a request to publish these in forthcoming government publications.

(c) **Legal uses**

237. These texts should be brought to the attention of those working in the legal community, in particular to the attention of human rights organizations, progressive lawyers working for housing rights and against evictions, and legal aid clinics. All persons undertaking legal initiatives against housing rights violations should be made aware of the relevant texts on housing rights. These texts could be used to propose new legislation and amendments to existing legislations. The texts could also be used to ensure that the basic principles of the right to housing as reflected in international law are respected in any new legislation or amendment to existing legislations that is currently being proposed.

238. If there are ongoing legal cases concerning housing rights violations, the relevant housing rights texts can be used to support the arguments being made. For example in cases of forced evictions in any form which go to court or before a judge, the relevant articles of instruments that the country has ratified, as well as resolutions on housing rights and forced evictions adopted by the Commission on Human Rights and the Subcommission, should be utilized as a supportive legal document protecting the rights of people not to be evicted. 40/

239. The lawyers and legal activists in the area could be asked to initiate test cases on housing rights issues using the housing rights provisions contained in the international instruments.

240. If the country Constitution does not mention the right to housing, all relevant instruments containing the right to housing, but in particular the constitutional sources listed in annex I to the present report, could be used to propose a constitutional amendment containing the right to housing.

241. The relevant texts of housing rights could be brought to the attention of the Ministry of Justice (Law Ministry) in the country, as well as to the attention of the supreme court, the court of appeal and other courts, or to judges known to support housing rights.

(d) Policy and budgetary uses

242. If a national housing policy is being prepared in the country or one already exists, the housing rights sources can be used to argue in support of the human rights approach to issues concerning housing and living conditions.

243. If there are any plans to draft resettlement, relocation or rehabilitation policies, it may prove useful to bring these texts to the notice of the drafting authorities.

244. If there are plans in a given country or region to draft or revise policies (housing, industrial, development, energy, agricultural and so forth) it could be worthwhile to bring the texts to the notice of the appropriate ministry (ministries) as an argument for the inclusion of the empowering aspects of the housing rights approach and as an argument against the inclusion of clauses in those policies that could lead to violations of the right to housing.

245. Housing rights texts should be brought to the attention of the appropriate section or branch of the ministry of housing or other appropriate ministry responsible for issues of housing, human settlements, planning and resettlement policies.

246. The section in the Special Rapporteur's first progress report on clarifying the obligations and entitlements of the right to adequate housing, 41/ could be used to argue against reductions in budgetary allocations to all the social sectors that have an impact upon housing, in particular health, livelihood and environment. If the country is undergoing economic adjustment programmes then the housing rights provisions could be used to argue against the usual reductions that result from the adoption of adjustment policies.

(e) Utilizing the United Nations

247. The housing rights texts and the indicators contained in chapter IV of the present report can be used to prepare parallel reports to the relevant United Nations bodies. Particularly useful are the reporting guidelines prepared by the Committee on Economic, Social and Cultural Rights on article 11.1 of the International Covenant on Economic, Social and Cultural Rights. 42/

248. The housing rights texts could be used to inform other like-minded organizations of the possibilities that exist within the United Nations system for recognizing violations of economic, social and cultural rights in general and for promoting international debate on issues such as housing rights.

(f) Political and strategic uses

249. The housing rights texts should be used to promote the relevance of and critical need for the human rights approach and the need for strengthening activity around the economic, social and cultural rights approach. Keeping this broad goal in mind the texts should be brought to the attention of the national Government (and regional Governments), through whatever means are considered appropriate within the country. The Government should be encouraged to respond as to whether it:

(i) Is aware of the legal obligations in these texts;

(ii) Intends to develop new policies or laws concerning housing rights protection further to the adoption of these texts by the United Nations;

(iii) Would be willing to encourage the United Nations to pursue the issue of violations of housing rights further in the future;

(iv) Possesses the will to pursue negotiations with persons and groups currently affected by housing rights violations, in accordance with the texts;

(v) Will issue a public statement to the effect that it takes the resolutions seriously, and will abide by its contents.

250. If groups are involved with political parties and have contacts within certain parties; the texts could be brought to their attention. Parties could be urged to include the issues contained in the texts in their publications and in the party manifestos. Opposition parties could be urged to put pressure on the Government to specify what it intends to do concerning the housing rights obligations contained in the texts. Encouragement could be given to friendly politicians to initiate debate in the Parliament concerning the texts and the obligations for the Government currently in power arising from their provisions.

(g) Campaigning, mobilizational and networking uses

251. All groups are encouraged to convene meetings with the communities and people with whom they work. Dwellers should be provided with copies of the housing rights texts and descriptions of how they can use the texts.

252. If a campaign for housing rights or other similar campaigns exist in a given country or region, the texts could be discussed at meetings. During such discussions, plans of action based on the texts could be explored and developed.

253. The housing rights should be brought to the attention of groups that are struggling against evictions and other housing rights violations.

254. The instruments should be brought to the notice of campaigns and struggles under way on issues related to housing rights, such as health, livelihood and environment. NGOs and community based organizations (CBOs)

that are working on issues such as women's rights, children's rights or the rights of indigenous and tribal peoples should locate the articles in the relevant human rights instruments that have empowering implications for their struggles.

255. The housing rights texts, combined with the interpretation made by United Nations bodies of these instruments and the analysis provided by the Special Rapporteur can be used to make a solid case concerning the extent of State responsibility that exists. If a document based on the above-mentioned information were to be compiled, it could then form the basis for lobbying the relevant authorities to promote the housing rights approach.

(h) **Academic and educational uses**

256. The housing rights texts could be sent to research institutes and universities in a country or region. Requests could be made to these institutions to provide their own commentary about the housing rights texts and their suggestions for further action.

257. Legal academics and scholars could be asked to carry out in-depth research concerning the existing international legal obligations of the Government to respect, protect and fulfil the right to adequate housing and how reliance on these legal duties could facilitate greater governmental concern about housing rights issues and imperatives.

258. The housing rights texts can be used as a basis for training courses and training manuals on the relevance of international law for human rights activists, lawyers, judges and bureaucrats.

259. In addition to the suggestions outlined above, the Special Rapporteur would like to place emphasis on the need for all human rights groups to adopt a holistic approach to human rights. Groups, for example, that are working on civil and political rights issues need to take into account the urgent human rights concerns that are projected by groups working in the economic, social and cultural rights field, and need to bear in mind in their work the critical importance of protecting and promoting these rights in such a way that a stable environment and democracy can prevail in countries. These groups need to recognize that many human rights violations, such as forced evictions, are as much violations of civil and political as of economic, social and cultural rights. These groups need not, therefore, hesitate to cite human rights instruments containing economic, social and cultural rights in their work and in their public relations activities so that a full vision of human rights prevails.

260. Finally, the Special Rapporteur requests the Secretary-General to distribute his final report to each entity referred to in these recommendations and to compile any responses received from those entities in a document for submission to the Subcommission at its forty-eighth session.

Notes

1/ Department of Economic and Social Development, Report on the World Social Situation 1993, (United Nations publication, Sales No. E.93.IV.2).

2/ See Somsook Boonyabancha, "Enabling communities through savings and integrated credit schemes as a strategy for dealing with poverty alleviation" (Urban Community Development Office, Thailand, 1994).

3/ Ibid., p. 4.

4/ See, for example, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, B'TSELEM (The Israeli Information Centre for Human Rights in the Occupied Territories), Jerusalem, 1995.

5/ See Miloon Kothari, "Palestinians in East Jerusalem: Systematic dispossession" in Mainstream, vol. XXXIII, No. 26, 20 May 1995, pp. 15-31. See also, joint written statement submitted to the Subcommission on the Prevention of Discrimination and Protection of Minorities by Habitat International Coalition and the Palestine Human Rights Information Center, (E/CN.4/Sub.2/1994/NGO/7).

6/ See Habitat International Coalition statement at the fifty-first session of the Commission on Human Rights under agenda items 4 and 9 (E/CN.4/1995/SR.5).

7/ For a look at the core elements and indicators that arise from a gender equality perspective of the right to housing, see chapter IV.

8/ See, for example, "Humanising Housing in India Today" (Report of a national workshop) (National Campaign for Housing Rights, Calcutta, 1987).

9/ See, in particular, Bina Agarwal A Field of One's Own: Gender and Land Rights in South Asia (Cambridge University Press, UK and Foundation Books, New Delhi, 1994); Also see Diana Lee-Smith, Habitat International Coalition (HIC), Women and Shelter Network "Women's Legal Right to Housing, with particular reference to Africa" (paper presented at the HIC International Workshop on the Legal Right to Housing, Manila, September 1993).

10/ E/CN.6/1994/3, para. 5.

11/ See, for example, the demands put forward in the joint statement of HIC, Women and Shelter Network, GROOTS (Grassroots Organizations Operating Together for Sisterhood); ICW (International Council of Women) and the UNCHS (Habitat) women in human settlements development programme to the United Nations Fourth World Conference on Women, Beijing, 4-15 September 1995.

12/ E/CN.6/1994/3, paras. 46-47.

13/ For some eloquent testimonies on the forces facing children on the streets see Youth For Unity of Voluntary Action (YUVA) "Life on the Mean Streets" (YUVA, Bombay, 1995).

14/ See op. cit. note 3, Bina Agarwal A Field of One's Own: Gender and Land Rights in South Asia; Also see Plant, Roger Land Rights and Minorities (Minority Rights Group, London, 1994).

15/ See Food First International Network (FIAN), Economic Human Rights: Their Time has Come (FIAN International, Heidelberg, 1995).

16/ See decisions taken by the Committee on Economic, Social and Cultural Rights at its twelfth session, May 1995 (E/1995/L.21, chap. II, para. 10).

17/ Craig Scott and Patrick Macklem, "Constitutional ropes of sand or justiciable guarantees? Social rights in a new South African Constitution" in University of Pennsylvania Law Review, vol. 141, No. 1, 1992, p. 28.

18/ See, for instance, Martin Partington and Jonathan Hill Housing Law: Cases, Materials and Commentary (Sweet & Maxwell, London, 1991). Also, on the broad dimensions of law relevant to housing rights in the United Kingdom, see Geoffrey Randall, Housing Rights Guide (SHAC, London, 1995).

19/ General Comment No. 4 identifies six areas capable of judicial scrutiny: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; (e) complaints against landlords concerning unhealthy or inadequate housing conditions; and (f) class action suits in situations involving significantly increased levels of homelessness (E/1992/23-E/C.12/1991/4, annex III).

20/ For instance "The Government should ensure that forced evictions are not carried out except in truly exceptional circumstances, following consideration of all possible alternatives and in full respect of the rights of all persons affected. The Committee urges the Government to extend indefinitely the moratorium on summary and illegal forced evictions and demolitions and to ensure that all those under threat in those contexts are entitled to due process" (Philippines, twelfth session). "The Committee regrets that a large number of households have experienced harassment or illegal eviction and notes that the national housing policy is not adequate to address this problem" (United Kingdom, eleventh session). "The Committee reiterates the importance it attaches to the right to housing and reaffirms its long-standing view that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in truly exceptional circumstances. The situation regarding forced evictions within the country continues to be viewed with concern by the Committee ... It therefore expresses its serious concern about the nature and magnitude of the

problems relating to forced evictions and calls upon the Government of the Dominican Republic to take urgent measures to promote full respect for the right to adequate housing" (Dominican Republic, eleventh session). "The Committee requests the Government of Nicaragua to provide precise information on the incidents involving the expulsion of persons who have occupied land and to inform it, before May 1994, of the measures it has adopted, in accordance with the undertakings of the Covenant, to deal with the problems of irregular settlements. In this regard, the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in conformity with relevant principles of international law" (Nicaragua, ninth session). "The Committee urges the State party to desist from policy measures that lead to large-scale evictions. It recalls General Comment No. 4 (1991) in which it noted that "the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law" (Mexico, ninth session). "With regard to the right to adequate housing, the Committee notes with great concern that practices of forced evictions without consultation, compensation or adequate resettlement appear to be widespread in Kenya, particularly in Nairobi" (Kenya, eighth session).

21/ Matthew C.R. Craven, "The domestic application of the International Covenant on Economic, Social and Cultural Rights", in Netherlands International Law Review, vol. XL, 1993, p. 389.

22/ Sir William Wade and Christopher Forsyth, The Administrative Law (Clarendon Press, Oxford, 1994).

23/ Now supplemented by the Treaty of Maastricht (1993) and the European Communities (Amendment) Act 1993.

24/ Op. cit., note 22, p. 496.

25/ Unna Krishnan J.P. and others vs. State of Andhra Pradesh and others (AIR 1993, SC 2176).

26/ C.E.S.C. Limited and others vs. Subash Chandra Bose and others (1992) (1), SCC 441.

27/ As indicated in the first progress report (E/CN.4/Sub.2/1993/15, para. 109).

28/ For an up-to-date compilation of sources on housing rights see Centre on Housing Rights and Evictions (COHRE) Legal Provisions on Housing Rights: International and National Approaches (COHRE, Utrecht, Netherlands, 1994).

29/ Vienna Declaration and Programme of Action of the World Conference on Human Rights, A/CONF.157/23, Part II, para. 98.

30/ See in particular Indicators Programme: Monitoring the Shelter Sector - Housing Indicators Review: The Survey Instrument, Vol. 3, UNCHS and the World Bank, Nairobi, February 1995. Also see "Urban and Housing Indicators" Report of the Executive Director of the Commission on Human Settlements (HS/C/15/3/Add.2), 21 December 1994.

31/ The framework attempted draws from the criteria for State compliance developed in the revised version of Miloon Kothari "The human right to adequate housing: Towards ideal indicators and realistic world views" (Paper presented to the United Nations Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights, HR/Geneva/1993/Sem/BP.16), republished by the Centre on Housing Rights and Evictions (COHRE), Occasional Paper No. 3, January 1995, Utrecht, Netherlands.

32/ See also the discussion on health and the right to housing in chapter I. Also see Health Principles of Housing, WHO, Geneva, 1989.

33/ See National Campaign for Housing Rights, The Housing Rights Bill (draft), Bombay, 1992.

34/ See Scott Leckie, Towards an International Convention on Housing Rights: Options at Habitat II (American Society of International Law, Washington, D.C., 1994).

35/ For one attempt at such an approach see chapter IV.

36/ For the particular rights that are related to the right to housing, see chapter II.

37/ WHO, Health Principles of Housing (WHO, Geneva, 1989).

38/ For the relevant texts, see the Special Rapporteur's first progress report (E/CN.4/Sub.2/1993/15, annex). For constitutional sources of housing rights see annex I to the present report. For a comprehensive compilation of national, regional and international sources of housing rights, see op. cit. note 28, (COHRE) Legal Provisions on Housing Rights: International and National Approaches.

39/ Ibid. COHRE, pp. 7-12. See also op. cit. note 15, FIAN Economic Human Rights: Their Time Has Come, pp.70-76.

40/ For a listing and relevant excerpts of these resolutions see op. cit. note 28, COHRE Legal Provisions of Housing Rights, pp. 29-32.

41/ E/CN.4/Sub.2/1993/15, paras. 93-97.

42/ E/C.12/1991/1.

Annex I

CONSTITUTIONAL SOURCES OF HOUSING RIGHTS

(revised 31 May 1995)

Republic of Afghanistan (1990)*#+

Article 17

The State shall promote construction to provide State and cooperative housing and help in the construction of private houses.

Albania (1976)*#+

Article 23

The personal property of the citizens is recognized and protected by the State. Personal property is: income from work and other lawful sources, dwelling houses and other objects which serve to meet personal and family material and cultural needs.

Argentina (1853)*#+

Article 14

The State shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the State shall establish: compulsory social security, which shall be in the charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with the participation of the State, but there can be no overlapping of contributions; flexible retirement pay and pensions; full protection of the family; protection of the family welfare ("bien de familia"); economic compensation to families and access to decent housing.

Austria (1929)*#+

Article 11

In the following matters legislation is federal [States] business, execution that of the Länder:

...

3. people's housing

Bahrain (1973)#+

Article 9 (f)

The State shall strive to provide housing for citizens with limited income.

Bangladesh (1972)#+

Article 15

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens:

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.

Belgium (1994)*#+

(revised Constitution)

Article 23

Everyone has the right to lead a life consistent with human dignity.

To that end, the laws, decrees or rules referred to in article 26 bis, taking into account the respective obligations, shall guarantee economic, social and cultural rights and determine the conditions in which they are exercised.

These rights include in particular:

...

3. The right to decent housing.

Bolivia (1967)*#+

Article 158

The State has the obligation to defend human capital by protecting the health of the population; it shall ensure the continuity of its means of livelihood and the rehabilitation of disabled persons; it shall also strive for the improvement of the living conditions of the family as a group.

The social security systems shall be based on the principles of universal coverage, solidarity, uniformity of treatment, economy, timeliness and effectiveness, embracing the contingencies of illness, maternity, occupational hazards, disability, old age, forced shutdowns, family allocations and social housing.

Article 199

The State shall protect the physical, mental and moral health of children and shall uphold the rights of children to a home and to an education.

Brazil (1988)*#+

Article 7

The following are rights of both urban and rural workers, in addition to other rights directed towards improving their lot in society:

IV. A minimum wage established by law and unified on a nationwide basis; such wage to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose.

Article 21

The Union shall have the power to:

XX. Institute guidelines for urban development, including housing, basic sanitation and urban transportation.

Article 23

The Union, the States, the Federal District and the Municipalities have a mutual responsibility to:

IX. Promote housing construction programmes and the improvement of living and basic sanitation conditions.

Article 187

Agricultural policy shall be planned and implemented pursuant to the law, with regular participation in that process by the production sector - involving both rural producers and workers - as well as by the marketing, warehousing and transportation sectors, considering the following in particular:

VIII. Housing for the rural worker.

Article 200

The unitary health system has authority to perform the following functions, in addition to any other prerogatives, pursuant to law:

IV. Participate in formulating policy and implementing actions in the area of basic sanitation services.

Article 203

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security; the objectives of this service are as follows:

II. Shelter for needy children and adolescents.

Burkina Faso (1991)#+

Article 18

Education, instruction, training, employment, social security, housing, leisure, health, protection of mothers and infants, assistance to the aged or handicapped persons and in social cases and artistic and scientific creation shall constitute the social and cultural rights recognized by the present Constitution, which aims to promote them.

Cambodia (1993)*#+

Article 63

The State shall pay attention to market management and to helping ensure appropriate living conditions for people.

Colombia (1991)*#+

Article 51

All Colombian citizens are entitled to live in dignity. The State shall determine the conditions necessary to give effect to this right and promote plans for public housing, appropriate systems of long-term financing and community plans for the execution of these housing programmes.

Article 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services in the areas of education, health, housing, social security, recreation, credit, communications, the marketing of produce and technical and management assistance with the purpose of improving the income and quality of life of the peasants.

Article 366

The general well-being and improvement of the population's quality of life are social purposes of the State. A basic objective of action shall be to address the unsatisfied public health, educational, environmental and drinking water needs of those affected.

Article 367

Home public services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits permit it and make it advisable and the departments shall carry out support and coordination functions.

Costa Rica (1949)*#+

Article 65

The State shall promote the construction of low-cost housing and create a family homestead for workers.

Dominican Republic (1966)*#+

Article 15

With the aim of strengthening its stability and well-being and its moral, religious and cultural life, the family shall receive the broadest possible protection from the State.

b. The establishment of every Dominican home on land or with improvements belonging to the occupant is declared to be of high social interest. To this end, the State shall encourage the development of public credit on advantageous terms, intended to make it possible for all Dominicans to possess a comfortable and sanitary home.

Article 17

The State shall encourage the progressive development of social security so that every person shall be able to enjoy adequate protection against unemployment, sickness, disability and old age.

The State shall also offer social assistance to the poor. This assistance shall consist of food, clothing and, in so far as possible, adequate housing.

Ecuador (1979)*#+

Article 19

Without prejudice to other rights necessary for complete moral and material development that derives from the person's nature, the State guarantees:

(14) The right to a standard of living that ensures the necessary health, food, clothing, housing, medical care and social services.

Article 25

The child will be protected from conception and the support of the minor is guaranteed, so that his growth and development is adequate for his moral, mental and physical integrity, as well as for his home life.

Article 30

The State shall contribute to the organization and promotion of the various sectors of the population, especially rural workers, in moral, cultural, economic and social matters, so as to enable them to participate effectively in the development of the community.

(It) Shall promote housing programmes of social interest.

(It) Shall provide the means of subsistence to whomever lacks resources and is not in a position to acquire them and can find no one or no agency obligated by law to provide them.

Article 50

To make the right to housing and to the conservation of the environment effective, municipalities may expropriate, reserve and control areas for future development in accordance with the law.

El Salvador (1984)*#+

Article 38

Labour shall be regulated by a labour code, the principal purpose of which shall be to attain harmony in relations between capital and labour, and it shall be based on general principles directed towards better living conditions for workers, and shall include the rights of the worker, especially the following:

2. Every worker has the right to earn a minimum wage, which shall be fixed periodically. In fixing this wage, attention shall be given primarily to the cost of living, the type of work, the various systems of remuneration, the various regions of production and other similar criteria. This wage must be sufficient to satisfy the normal home needs of a worker in their material, moral and cultural aspects.

Article 51

The law shall specify what enterprises and establishments, owing to special conditions, are required to provide a worker and his family with suitable housing, schools, medical assistance and other services and attention necessary for their well-being.

Article 106

Expropriation will proceed because of public utility or social interest, legally proven and after just indemnification.

When expropriation is caused by the necessities of war or public disaster or if it is for the purpose of supplying water or electric power, or for the construction of housing or roads, compensation need not be given in advance.

Article 119

Housing construction is declared to be a matter of social interest.

The State shall endeavour to permit the greatest possible number of Salvadorian families to become home-owners. It shall undertake to see that every farm owner shall provide a sanitary and comfortable home for his workers and tenants and shall provide facilities to enable small owners to do so.

Equatorial Guinea (1982)*+

Article 20

Each person enjoys the following rights:

13. To a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services.

Fiji (1990)#+

Article 16

(7) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

Finland*#+

(Draft constitutional provisions on fundamental rights, 1993)

Article 15 (a)(4)

The public authority is responsible for promoting the right to housing for everybody and supporting self-acting arrangements of housing.

Greece (1975)*#+

Article 21

4. The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.

Guatemala (1985)*#+

Article 67: Protection of native agricultural lands and cooperatives

The lands of the cooperatives, native communities or any other forms of communal possession or collective or agrarian ownership, as well as the family heritage and popular housing shall enjoy the special protection of the State, credit assistance and preferential technology which may guarantee their ownership and development in order to ensure an improved quality of life to all inhabitants.

Article 105: Workers' housing

Through specific entities, the State will support the planning and construction of housing projects, establishing adequate systems of financing that would make it possible to involve the different programmes so that the workers may opt for adequate housing and meet health requirements.

The owners of enterprises are obliged to make available to their workers in cases established by law the housing units that meet the above-mentioned requirements.

Article 119: Obligations of the State

The following are basic obligations of the State:

g. To promote on a priority basis the construction of popular housing through systems of financing, so that a larger number of Guatemalan families may have title to it.

Guyana (1980)*#+

Article 26

Every citizen has the right to proper housing accommodation.

Haiti (1987)#

Article 22

The State recognizes the right of every citizen to decent housing, education, food and social security.

Honduras (1982)*+

Article 118

The homestead shall be the subject of special legislation designed to protect and further it.

Article 123

Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period; as much for the child as for the mother, both being entitled to food, housing, education, recreation, exercise and adequate medical services.

Article 128

Laws governing the relations between employers and workers are matters of public policy. All acts, stipulations or agreements that involve the waiver, diminution or restriction or evasion of the following guarantees shall be void:

5. Every worker is entitled to minimum wages fixed periodically by participation of the State, employers and workers, sufficient to meet the normal material, moral and cultural needs of his household, in accordance with the standards of each kind of work, the conditions peculiar to each region and type of work, the cost of living, the relative skill of workers and the pay systems of the enterprises.

Article 141

The law shall determine which employers, according to their capital and the total number of workers, shall be required to provide them and their families with educational, health, housing and other services.

Article 178

All Hondurans have the right to decent housing. The State shall design and implement housing programmes of social interest.

The law shall regulate the leasing of housing and premises, the use of urban land and construction, in accordance with the public interest.

Article 179

The State shall promote, support and regulate the creation of systems and mechanisms for the utilization of internal and external resources for solving the housing problem.

Article 180

All internal or external credits and loans obtained by the State for housing shall be regulated by law for the benefit of the ultimate user of the credit.

Article 181

The Social Fund for Housing is hereby created. Its purpose shall be to develop housing in urban and rural areas. A special law shall regulate its organization and functioning.

Article 345

Agrarian reform is an essential part of the overall development strategy of the nation and therefore any other economic and social policies that the Government may approve shall be formulated and executed in harmony with it, especially those related, inter alia, to education, housing, employment, infrastructure, marketing and technical and credit assistance.

India (1949)*#+

Article 19 (I) (e)

All citizens shall have the right ... to reside and settle in any part of the territory of India.

Article 38 (I)

The State shall strive to promote the welfare of the people by securing as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 39 (a)

The State shall, in particular, direct its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to serve the common good.

Article 47

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health, as among its primary duties ...

Iran (Islamic Republic of) (1980)*#+

Article 3

In order to attain the objectives specified in article 2, the Government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

12. The planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty and abolish all forms of deprivation with respect to food, housing, work, health care and the provision of social insurance for all.

Article 31

It is the right of every Iranian individual and family to possess housing commensurate with their needs. The Government must make land available for the implementation of this article, according priority to those whose need is greatest, in particular the rural population and the workers.

Article 43

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.

Italy (1947)*+

Article 47

The Republic encourages and safeguards savings in all aspects and supervises, coordinates and controls the issuing of credit.

It encourages the investment of private savings in the purchase of homes or holdings directly farmed by the owners and direct or indirect investment in large productive enterprises.

Jordan (1984)*#+

Article 7

Individual freedom shall be safeguarded.

Article 10

Dwellings are inviolable and may not be entered except in the circumstances provided for by law and in the manner specified therein.

Article 11

No one shall expropriate the property of another person except in the public interest.

Kenya (1969)*+

Article 82

(7) Subject to subsection (8), no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

Republic of Korea (1948)*#+

Article 35

(3) The State shall endeavour to ensure comfortable housing for all citizens through housing development policies and the like.

Democratic People's Republic of Korea (1972)*+

Article 26

The State increases the role of the country and strengthens its guidance and assistance to the countryside in order to eliminate the difference between town and country and the class distinction between the working class and the peasantry.

The State undertakes the building of production facilities of the cooperative farms and modern houses in the countryside at its expense.

Libyan Arab Jamahiriya*#+

Resolution of the People's Congresses in their Third Regular Session for 1980, endorsed by the General People's Congress in its Sixth Regular Session (1981):

(4) Revision of the General Housing Policy and the creation of a special Housing Bank. The Basic People's Congresses decided the following:

(a) Formulation of a Housing Policy whereby the direct role of society would be limited to providing free housing for those unable to earn a living and to constructing public project housing units for those unable to participate in the new housing associations.

(b) Establishment of a Real Estate Investment and Saving Bank to make loans available to citizens and to real estate business. This bank will be a fundamental instrument in providing housing to the citizen, who must play a direct and active role in financing the construction of his house and carry out his obligations resulting from obtaining the loan and the ownership of a house.

Text of the General People's Congress Law No. 20 of 1991 on the Consolidation of Freedom (1991):

Article 27

A woman who is raising children has the right to stay in the conjugal home during the rearing period. A man has the right to keep his personal belongings and it is not permissible for his house, its contents or part of it to be taken in compensation for divorce or divorce at the instance of the wife or to be included in the estimates for remainder or alimony.

Lithuania (1992)*+

Article 21

Human dignity shall be protected by law.

Article 23

Property shall be inviolable.

The rights of ownership shall be protected by law.

Article 24

A person's dwelling place shall be inviolable. Without the consent of resident(s), entrance into a dwelling place shall only be permitted upon a corresponding court order, or according to the procedure established by law.

Madagascar (1992)*#+

Article 8

Malagasy citizens are equal before the law and enjoy the same fundamental freedoms protected by the law. The State shall proscribe any discrimination deriving from sex, level of education, wealth, origin, religious belief or opinion.

Article 9

The exercise and protection of individual rights and fundamental freedoms shall be organized by the law.

Article 17

The State shall organize the exercise of the rights which guarantee to the individual the integrity and dignity of his person and his full physical, intellectual and moral development.

Mali (1992)*#+

Article 16

Education, instruction, training, work, housing, leisure, health and social protection shall constitute recognized rights.

Mexico (1983)*#+

Article 4

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary support in order to reach the said goal.

Namibia (1990)*#+

Article 8 (1)

The dignity of all persons shall be inviolable.

Article 10

No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 16

All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable property and movable property individually or in association with others and to bequest their property to their heirs or legatees.

Nepal (1990)*#+

Article 26: State policies

(1) The State shall adopt a policy which is directed towards the upliftment of the standard of living of the general public through the development of the basic structures like public education, health, housing and employment of the general public of all the regions by making equitable distribution of investment of the economic resources for the balanced development of the various geographical regions of the country.

Netherlands (1984)*#+

Article 22

2. It shall be the concern of the authorities to provide sufficient living accommodation.

New Zealand (1986)*#+

The Human Rights Commission Act 1977

Article 25: Land, housing, and other accommodation

(1) It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal:

(a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or

(b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or

(c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or

(d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or

(e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation - by reason of the sex, marital status or religious or ethical belief of that person.

Nicaragua (1987)*#+

Article 64

Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfilment of this right.

Nigeria (1989)*#+

Article 17

(2) The State shall direct its policy toward ensuring:

(d) That suitable and adequate shelter, food, water supply, a reasonable national minimum living wage, old-age care and pensions, unemployment and sickness benefits and welfare for the disabled are provided for all citizens.

Islamic Republic of Pakistan (1990)#+

Article 38

The State shall:

(d) Provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

Panama (1978)*#+

Article 109

The State shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.

Paraguay (1992)*+

Article 59: About family property

Family property is hereby recognized as an institution of a social interest. The law shall implement a system under which it will operate. Family property shall consist of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

Article 100: About the right to have a house

Every inhabitant of the Republic has the right to decent housing facilities.

The State will establish conditions conducive to the implementation of this right and will promote housing projects of social interest specially designed for low-income families through adequate methods of financing.

Peru (1979)*#+

Article 10

It is the right of the family to enjoy a decent home.

Article 18

The State takes care preferentially of the basic needs of the individual and his family in terms of food, housing and recreation.

The law regulates the use of urban land in keeping with the common good and the participation of the local community.

The State promotes the execution of public and private programmes of urban development and housing.

The State supports and promotes cooperatives, mutual aid societies and, in general, housing mortgage institutions and programmes of self-built construction and rental purchase. It grants incentives and tax exemptions in order to make construction cheaper. It creates conditions for the granting of long-term, low-interest credits.

Philippines (1986)*#+

Article 13 (9)

The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programmes the State shall respect the rights of small property owners.

Article 13 (10)

Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just, human manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be resettled.

Poland (1992)*#+

Article 79

(5) The Republic of Poland, being mindful of the interests of the family, shall strive to improve housing conditions and, in cooperation with citizens, shall develop and promote various forms of residential construction, especially those promoted by cooperative societies, and shall now care in a proper management of housing resources.

Portugal*#+

(1976, as revised 1992)

Article 65

(1) Everyone shall have the right for himself and his family to a dwelling of adequate size, satisfying standards of hygiene and comfort and preserving personal and family privacy.

(2) In order to safeguard the right to housing, it shall be the duty of the State to:

(a) Draw up and put into effect a housing policy that is a part of general regional planning and is based on urban planning that secures the existence of an adequate network of transport and social facilities;

(b) Encourage and support local authorities' and communities' initiatives aimed at solving their housing problems and promoting the establishment of housing cooperatives, as well as individual building;

(c) Promote private building subject to the public interest, as well as access to privately owned dwellings.

(3) The State shall adopt a policy aimed at introducing a system of rents compatible with family incomes and of individual ownership of dwellings.

(4) The State and local authorities shall exercise effective supervision over immovable property, expropriate urban land where necessary and lay down the legal requirements for its use.

Qatar (1970)#

Chapter VII

(b) Social affairs

6. Supervise reform institutions for criminals and juvenile delinquents, as well as homes for the aged, the disabled, paupers and those suffering from an infirmity.

Romania (1991)*#+

Article 43

The State is obliged to take measures for economic development and social protection which will ensure that all citizens have a decent standard of living.

Russian Federation (1993)*#+

Article 40

1. Each person has the right to housing. No one may be arbitrarily deprived of housing.

2. Organs of State power and organs of local self-government encourage housing construction and create the conditions for exercise of the right to housing.

3. Housing is provided free or at affordable cost to low-income and other citizens indicated in the law who require housing from State, municipal and other housing stocks, in accordance with the norms prescribed by laws.

Sao Tomé and Principe (1975)+

Article 48: Housing and environment

1. All have the right to housing and to an environment of human life, and the duty to defend it.

2. It is incumbent upon the State to plan and execute a housing policy inserted in the plans for zoning of the territory.

Seychelles (1993)*#+

Article 34

The State recognizes the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the cooperation of public or private organizations to facilitate the effective realization of this right.

South Africa (1993)

Article 19

Everyone shall have the right to choose his or her place of residence anywhere within the national territory.

Article 26 (1)

Everyone shall have the right to freely engage in economic activity and to pursue a livelihood anywhere in the national territory.

Article 28 (1)

Everyone shall have the right to acquire and hold rights in property and, to the extent that the nature of such rights permits, to dispose of such rights.

Spain (1978)*#+

Article 47

All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.

Sri Lanka (1977)*#+

Article 27

The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include:

2 (c) The realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.

St. Lucia (1978)#+

Preamble

Whereas the people of Saint Lucia ... (e) realize that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State;

Sudan (1987)*#+

(Constituent Assembly Procedure Regulations)

Article 25

The right of ownership shall be guaranteed to citizens and associations as organized by law and such property as organized by law and shall not be acquired or appropriated save for public interest and in consideration of fair compensation.

Article 30

Residences shall be inviolable and shall not be searched or entered save with the consent of their occupants and as in such conditions and procedures as may be specified by law.

Article 44

The Housing Committee is concerned with the following:

1. Study of national plans in the field of housing and building planning and investment in real estate;

2. Consideration of the legislation relating to housing and land distribution;

3. Discussion of problems relating to the phenomenon of illegal dwellings and the negative results of that and finding solutions and alternatives for the same.

Suriname (1987)*#+

Article 49

A housing plan shall be determined by law, aimed at the procurement of a sufficient number of affordable houses and State control of the use of real estate for public housing.

Sweden (1976/1977)*#+

Chapter 1: The basic principles of the Constitution

Article 2

...

The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent upon the community to secure the right to work, to housing and to education and to promote social care and security, as well as a favourable living environment.

Switzerland (1874)*#+

Article 34 (6)

1. The Confederation shall take measures aimed at encouraging the construction of housing, especially through lowering of costs, and improving the opportunity for owning a dwelling or house. Federal legislation shall determine the conditions for giving assistance grants.

2. The Confederation shall have the following particular powers:

(a) To facilitate the obtaining and development of sites for housing construction;

(b) To support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled and persons in care;

(c) To research into the housing market and into building methods, and to encourage rationalization in building; and

(d) To ensure that capital is obtained for housing construction.

3. The Confederation is authorized to decree the necessary legal provision for the development of sites intended for housing construction, as well as for rationalization in building.

4. In so far as the nature of these measures exceeds the powers of the Confederation alone, the Cantons shall be called on to help to carry them out.

5. The Cantons and other interested groups shall be consulted during the drafting of implementing legislation.

Turkey (1982)+

Article 57

The State shall take measures to meet the needs for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

Venezuela (1961)*#+

Article 73

The State shall protect the family as the fundamental nucleus of society and shall see to the betterment of its moral and economic position. The law shall protect marriage, shall promote the organization of attachable family patrimony, and shall provide whatever may help everyone to acquire comfortable and hygienic housing.

Socialist Republic of Viet Nam (1992)*#+

Article 58

Citizens have the right to own legally-earned income, savings, homes, means of activity and production, capital and other assets of business or other economic organizations. Concerning State-allocated land, clauses in articles 17 and 18 will be followed. The State protects citizens' legal rights to ownership and inheritance.

Article 62

Citizens have the right to build homes according to a plan and law. The rights of tenants and landlords shall be protected by law.

Source: International instruments: Chart of ratifications as at 31 December 1994 (ST/HR/4/Rev.11).

Note: * State party to the International Covenant on Economic, Social and Cultural Rights.

State party to the International Convention on the Elimination of All Forms of Racial Discrimination.

+ State party to the Convention on the Rights of the Child.

Annex II

THE JERUSALEM DECLARATION

Draft charter of the Palestine Housing Rights Movement

29 May 1995

DECLARATION

The Palestine Housing Rights Movement is a coalition of non-governmental organizations, community-based groups and activists who are committed to promoting the housing rights of all Palestinians. We understand this to mean the right of every woman, man and child to a place to live in security and dignity.

We affirm that housing is a fundamental human right and that adequate housing is essential to the freedom, dignity, equality and security of persons, families and communities.

We emphasize the inseparable relationship between the right to adequate housing and the right to life, the right to livelihood and the right to an adequate standard of living.

We affirm that Palestinians, like all people, have the right to adequate housing, including the right to active participation in all decisions in the process toward achieving that right for all Palestinians.

Recognizing that the national liberation movement of the Palestinian people is informed by the longing and struggle for the homeland as a place of security, peace and dignity for the Palestinian family, we call upon the Palestinian people to join us in ensuring that our housing policy serves as the cornerstone of our nation-building effort.

We affirm that priority must be given to all Palestinians who have lost their homes, first of all to all Palestinian refugees returning to their homeland, to those who have lost their homes through demolitions, evictions and other dispossession as a result of Israeli occupation policies, and to all Palestinians who suffer from inadequate housing and conditions of homelessness.

We commit ourselves to ensuring that housing resources and community services are managed equitably and efficiently so as to protect and promote the progressive and daily realization of our right to self-determination.

We commit ourselves to the special efforts and cooperation required to plan, build, preserve and restore our housing resources to ensure adequate housing and sustainable development of our communities for all Palestinians.

We consider Jerusalem to be our capital city, the centre of our political, social, economic, cultural and religious life. We are committed to ensuring that all Palestinians have free and open access to Jerusalem, and we are further committed to promoting the housing rights of Palestinians in

Jerusalem, in accordance with the principles of this Charter. Toward this end, and recognizing the particular threats to our capital city and to the rights of Palestinians to a place to live in security and dignity in Jerusalem, we have launched a Jerusalem Housing Rights Campaign.

We consider that the principles and responsibilities of this Charter concern all Palestinians, men and women, in all parts of the country and in exile, in all sectors of our society, and at all levels from the individual and the local community to the nation. The Housing Rights Movement seeks to link with and unite its activities with similar groups committed to the principles of this Charter in exile, especially in Lebanon, where Palestinians are threatened with yet another displacement, as the plans for rebuilding Beirut infringe on existing camps.

We consider these principles and responsibilities binding on the Palestinian Authority, on the Israeli Government as the occupying power, and on our international partners who are fulfilling their international obligations to support and assist us in realizing our national goals.

We draw the attention of all these Governments to their binding obligations to respect, protect and fulfil the right to adequate housing and to the continuous improvement of living conditions as enshrined in article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

We see ourselves as part of a global movement of grass-roots efforts by women, men and children struggling for a place to live in security and dignity. We draw inspiration from these efforts and act in solidarity with them.

We are committed to the realization, protection and promotion of all human rights - civil and political rights as well as economic, social and cultural rights - inalienable, interdependent and indivisible - for all human beings, free and equal in dignity, without exclusion or discrimination. We respect and promote these principles in all our actions and programmes.

PLAN OF ACTION

The Palestinian Housing Rights Movement's Plan of Action is organized around four principles:

1. Ensuring access to adequate housing for all Palestinians without discrimination and in full equality.

2. Empowering all Palestinians by promoting democratic processes that enable all people, especially women, to participate fully and actively in decisions affecting their housing and community.

3. Building toward a sustainable development in which adequate housing is considered an essential right around which to design community services and integrated development programmes, utilizing local human and material resources.

4. Enabling all Palestinians to take effective control of housing and community projects through education and training and through provision of adequate financial support and other resources needed to realize their housing rights.

1. Ensuring access to adequate housing for all Palestinians requires sustained solidarity and concerted attention, including corrective and restorative actions where necessary, to ensure that all Palestinians, without discrimination and in full equality, enjoy these seven internationally recognized entitlements:

Secure tenure for everyone, tenants and owners, including legal protection against eviction, harassments or other threats to the security, peace and dignity of the household.

Sustainable access to the services, materials and infrastructure essential for health, security, comfort and nutrition.

Affordable housing, with provision for housing subsidies and protection to ensure that the financial costs of housing do not threaten or compromise the attainment and satisfaction of other basic needs.

Habitable housing, with adequate space and protection from the elements and other threats to health and safety.

Full and sustainable access to adequate housing and housing resources, including entitlement to land, for everyone, with priority to those who have lost their homes through demolition, eviction, land expropriation or other means, and those with special housing needs, particularly children, the elderly, and the disabled.

Housing located in a safe and healthy place, with respect for the environment and close to community services, places of worship, work and income-producing opportunities, health-care facilities, schools and child-care centres, recreation centres and parks.

Housing and communities designed, built and managed in conformity with Palestinian culture and values to maintain our cultural identity and skills, to preserve our national heritage and to promote our sense of being and belonging to a place, so crucial to our survival as a people.

The Palestinian people, living under occupation, as refugees, and in exile, have been denied these basic entitlements through the Israeli occupation policies of land confiscation, house demolitions, property destruction, forced eviction, denial of residency and citizenship, separation of families, discriminatory zoning and planning, and other policies of dispossession and disenfranchisement.

An essential first step in ensuring access to adequate housing, therefore, is to address the legacy of occupation by developing strategies aiming toward the restoration of land rights, compensation for property destruction and confiscation, reversal of discriminatory

planning, reunification of families, and rebuilding of homes and communities, with particular attention to refugee housing.

Secondly and of equal importance, the Palestinian people working with and through the Palestinian National Authority must ensure that planning and building of homes and communities are conducted through transparent mechanisms and procedures based on housing rights principles.

2. Empowerment requires that all actions with regard to housing, services and infrastructure include all the population, especially women, in orientation and key decisions. This means:

Guaranteeing the exercise of fundamental civil and political rights, including the right to information and to freedom of movement, expression, assembly and association.

Ensuring that no important decision regarding housing policy, planning, implementation and management is taken without the participation, through consultative bodies, of the people concerned, and especially women who are the first ones responsible for the management of the household, the care of the home, and the use of community services for the family.

Reinforcing the power of the basic community, an the participation of women, in their capacity to contribute to the design and implementation of housing projects and their management.

Structuring the partnership between international donors and technical support so that the true initiators of housing design and community development are the Palestinian communities themselves.

3. Sustainable development requires that housing be integrated into a global approach to political, social, economic and cultural development. This means:

Considering adequate housing an essential right around which to design integrated development programmes of health, sanitation, waste management, preservation of the environment, education, economic activities, community and recreational facilities.

Planning actions to preserve, renovate, and restore existing housing - taking particular care to preserve and revitalize architecture expressive of our heritage and culture - while creating new housing that is equitable and accessible and fulfils all other housing rights entitlements.

Emphasizing in all housing and community development projects the use of existing local resources in terms of expertise, employment, equipment and technology, in order to simultaneously contribute to the full employment of the Palestinian people and the economic development of the country.

Promoting regional cooperation within Palestine and throughout the Arab world to reinforce and enhance our social and cultural identity as a people.

4. Enabling Palestinians to take effective control of housing and community projects requires education, training, financial support and other resources.

Housing projects that aim simply to provide technical and physical solutions cannot in and of themselves create and sustain homes and living communities. Therefore, all housing projects and programmes must incorporate measures to enable men and women equally to take effective control of all aspects of housing and community projects, utilizing participatory approaches and relying on local skills and resources. In this regard, certain programmes should be given high priority:

Training in home maintenance and renovation, with full and equal access to necessary resources.

Community management programmes facilitating full and representative participation through democratic structures and procedures.

Comprehensive community-based environmental training on public health and hygiene, utilities and waste management, community services, and environmental protection.

Legal literacy training, particularly on tenants rights, land and property ownership.

Financial support for self-help projects, with provision for fair and equal access to credit.

International cooperation and support, responsive to community determined priorities and supportive of participatory approaches.

Note on sources

The principles of this Charter are based upon the recognition of the right to adequate housing enshrined in the Universal Declaration of Human Rights (25.1), the International Covenant on Economic, Social and Cultural Rights (1.1) and 10 other international conventions and declarations. The Charter also draws upon the articulation of entitlements and State obligations regarding the right to adequate housing by the Committee on Economic, Social and Cultural Rights in its General Comment No. 4 (1991), and from the resolutions adopted and other specific steps taken towards the implementation of economic, social and cultural rights by the Commission on Human Rights and the Subcommission on the Prevention of Discrimination and Protection of Minorities. In particular, we acknowledge the reports of the Special Rapporteur on the right to adequate housing, who visited here at our invitation in June 1994. In addition to these international developments, we draw inspiration from the work of grass-roots movements advocating for the right to adequate housing, most notably the draft bill of housing rights of the National Campaign for Housing Rights in India, and the work of Habitat International Coalition and its member NGOs. For further background on the legal sources and implications of the human right to adequate housing, see Human Rights Fact Sheet No. 21, published by the Centre for Human Rights (1994).

Annex III

LIST OF REPLIES RECEIVED

Replies to the note verbale and letter of 29 October 1993 were received from:

Governments

Austria, Bolivia, Canada, Denmark, Ethiopia, Finland, Germany, Ireland, Iran (Islamic Republic of), Jamaica, Jordan, Kazakhstan, Madagascar, Mexico, Namibia, Nigeria, Philippines, Romania, Sudan, Sweden, Saint Lucia, Saudia Arabia, Spain, South Africa, Thailand, Turkey, Venezuela.

United Nations

Department for Policy Coordination and Sustainable Development, Department for Policy Coordination and Sustainable Development/Secretariat International Year of the Family, Department for Economic and Social Information and Policy Analysis, United Nations Conference on Trade and Development, United Nations Environment Programme, Economic Commission for Europe, United Nations Centre for Human Settlements (Habitat), World Food Programme.

Specialized agencies

Food and Agriculture Organization of the United Nations, World Bank, International Monetary Fund.

Intergovernmental organizations

Commonwealth Secretariat, Council of Europe, Organization of American States, Inter-American Court of Human Rights, Organization for Economic Co-operation and Development.

Non-governmental organizations

African Association of Education for Development, Fondation du Léman, Habitat International Coalition, International Confederation of Free Trade Unions, International Council for Adult Education, Pan-African Women's Organization, Terre des Hommes, Women's International League for Peace and Freedom, World Medical Association, Inc., World Movement of Mothers.

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Subcommission on Prevention
of Discrimination and
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Forty-seventh session
Item 8 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Guidelines on international events and forced evictions

Report of the Secretary-General

1. In its resolution 1994/39 the Subcommission, reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, recognizing that the practice of forced evictions involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness, the loss of livelihood, landlessness, inadequate housing and living conditions and growing levels of poverty, and aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors, strongly urged Governments to undertake immediately all necessary measures, at all levels, towards eliminating the practice of forced eviction, in particular those Governments on whose territories forced evictions are currently planned to take place. It decided to consider the issue of forced evictions at its forty-seventh session under the agenda item "The realization of economic, social and cultural rights" and to determine at that session how most effectively to continue its consideration of the issue.

GE.95-13013 (E)

2. In paragraph 12 of the same resolution, the Subcommission requested the Secretary-General to prepare a series of guidelines on international events and forced evictions, in accordance with paragraph 172 of his analytical report (E/CN.4/1994/20). Although these guidelines were not requested for the forty-seventh session of the Subcommission, the Secretary-General has considered it worthwhile to submit some preliminary observations about the drafting of such guidelines. The present report should therefore be seen as an effort to solicit the views of the Subcommission on how best to give implementation to the request contained in its resolution 1994/39.

3. Paragraphs 171 and 172 of the analytical report read in part as follows:

> "... evictions often occur in connection with major international events, such as Olympic Games, beauty pageants, official State visits, international conferences, etc., which, on the one hand, have positive implications for the host country such as media attention and higher revenues but, on the other hand, should not be seen as reasonable justifications for the practice of force evictions.
>
> "There thus seems to be an arguable need for the drafting and adoption of guidelines for the planning of international events, which could be initiated by such United Nations bodies as the Commission on Human Rights and the Commission on Human Settlements."

4. Examples of such international events were given in paragraphs 52 and 53 of the analytical report of the Secretary-General. There were mass evictions of squatters in Zimbabwe, in 1991, prior to the visit of Queen Elizabeth II and the meeting of the Commonwealth Heads of State, which were justified on the grounds that such poverty would cause "severe embarrassment to the Queen". In the case of the 1988 Olympic Games in Seoul, the land needed for sports stadiums, accommodation and the enhancement of the image of the host country led to an extensive demolition and redevelopment programme. Plans surrounding the 1996 Olympic Games in Atlanta are similarly threatening several communities with forced relocation.

5. Another example brought to the attention of, among others, the Subcommission, was that of Thailand, where in 1991 it was reported that over 200 slum dwellers would be evicted prior to the convening of an IMF and World Bank meeting in Bangkok, under the justification of providing "good scenery" for the World Bank and IMF officials. 1/ Ironically enough, in Istanbul, where the Habitat II Conference will take place, 50,000 persons (11,000 families) were reported to be threatened with forced eviction by the end of 1994. 2/ Prior to the convening of the Non-Aligned Movement Summit in Jakarta in September 1992, demolition of the homes of over 10,000 residents took place, to create a "green space". Though compensation was provided to some dwellers, those affected complained that both cash payments and alternative dwellings were totally inadequate compared to their losses. 3/

6. Commentators have said forced evictions are almost always announced before they are carried out (whether or not they are legal or illegal), and consequently preventative measures designed to avoid these acts are

frequently possible. This concurs with the findings of the Secretary-General, who, in his analytical report, observed that in most cases evictions can be prevented and in all cases the adverse consequences can be avoided.

7. Although some evictions may be unavoidable and, under law, acceptable and reasonable, the human cost of forced evictions, such as the loss of a secure, neighbourly environment and social network critical for survival, the breaking up of communities, the lack of access to employment and the loss of culturally or traditionally significant sites, can be so harsh and demeaning that any justification for evictions must be evaluated in these terms and in accordance with generally recognized principles of international law. In cases where evictions are unavoidable, the Secretary-General argues, an obligation would exist on the part of the proponents of evictions to undertake measures to compensate the victims, so as to reduce the adverse consequences to a minimum.

8. The Commission on Human Rights, in its resolution 1993/77, affirmed that the practice of forced evictions constituted a gross violation of human rights, in particular the right to adequate housing and urged Governments to undertake immediate measures, at all levels, aimed at eliminating the practice. It also urged Governments to offer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.

9. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991), considered that instances of forced eviction are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law (E/1992/23/annex III, para. 18). Moreover, in its General Comment No. 2 (1990), the Committee stated that international agencies should scrupulously avoid involvement in projects which involved among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23/annex III, para. 6).

10. The need for better legal protection in the case of forced eviction is among the findings of the representative of the Secretary-General on internally displaced persons, as well as of the Special Rapporteur of the Subcommission on population transfer, whose mandates are closely related to that on forced evictions, as was described in the Secretary-General's analytical report. The Special Rapporteur on population transfer has suggested that the Subcommission begin work on a draft declaration on the subject of forcible population transfers and the implantation of settlers and settlements. The representative of the Secretary-General on internally displaced persons has pointed out the need to provide adequate and effective protection to the internally displaced through compiling and evaluating existing legal norms and developing guiding principles for bridging possible gaps.

11. The need for legislative protection against all manifestations of the practice of forced evictions thus seems to have found wide support. Legislation would create a framework of built-in parameters of acceptable

action by all actors capable of instigating the eviction process, and would serve to enhance and operationalize existing government obligations to respect housing rights.

12. The drafting of guidelines on planning international events and forced evictions could contribute to this process. However, as was stated in the Secretary-General's analytical report, guidelines might provide a tacit acceptance of the practice of eviction. It should be made clear, therefore, that developing guidelines on forced evictions can only be a partial solution. They are important but should not be allowed to be used as a rationale for encouraging the eviction process, nor viewed as a panacea for addressing the human component of this practice. If pursued faithfully and realistically by Governments, international agencies and others, the most important role of guidelines - discouraging and deterring the eviction process - can assist in finding real alternatives to this continuing violation of the human right to adequate housing.

13. It is submitted to the Subcommission that United Nations guidelines on forced evictions should be based on the following human rights considerations: the principle of non-discrimination; the need for participation; the need for taking decisions with the informed and free consent of the people concerned; the unlawfulness of force and coercion; access to courts; the right to appeal; the right to compensation and to seek remedial action and should include particular attention for women and vulnerable groups, such as indigenous ethnic minorities and the landless.

14. Specific elements to be considered in the drafting of guidelines on planning international events and forced evictions include:

The discouraging of external donors if evictions are likely to result from the planned event;

Public hearings conducted prior to the decision to adopt the plan in order to address the likelihood of evictions in connection with the event;

Persons threatened with forced eviction shall have the right to bring the matter before a court of law and the right to appeal before a higher court;

If no alternative to eviction exists, minimum periods of warning, possibilities for relocation and adequate financial compensation and participation in the process must be guaranteed.

15. Major multilateral institutions have adopted resettlement guidelines: the World Bank in 1990, the Organization for Economic Cooperation and Development in 1991, the Inter-American Development Bank in 1990 and the Asian Development Bank in 1992. The objective of these guidelines is to ensure that the population displaced by a project receives benefits from it, rather than suffering from the severe economic, social and environmental problems that traditionally accompany involuntary resettlement, such as: the loss of productive assets and income sources; the dispersion of community structures

and kin groups and the weakening of social networks; and the diminishing of cultural identity, traditional authority and the potential for mutual help.

16. The above-mentioned guidelines are based on policy considerations which have much in common with human rights concerns, such as:

(a) Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.

(b) Where displacement is unavoidable, resettlement plans should be developed. Displaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve upon their former living standards, income earning capacity and production levels, or at least to restore them.

(c) Community participation in planning and implementing resettlement should be encouraged.

(d) Resettlers should be integrated socially and economically into host communities so that adverse impacts on host communities are minimized.

(e) Land, housing, infrastructure and other compensation should be provided to the adversely affected population, indigenous groups, ethnic minorities and pastoralists who may have usufruct or customary rights to the land or other resources taken for the project.

(f) Since women are to a great extent responsible for making the natural resource base productive, planning for relocation should consider their preferences and should address their specific needs and constraints.

17. It is submitted that any human rights guidelines on planning international events and forced evictions should first of all be based on the consideration that most of the planned evictions are avoidable. Therefore, emphasis should be placed on seeking viable alternatives to the practice. If this is not possible, human rights law itself recognizes that under "exceptional circumstances" and "in accordance with existing principles of international law" evictions can be undertaken. However, the conditions in which such evictions could take place should be precisely delineated.

18. The challenge in drafting such guidelines lies in providing for the taking of immediate measures aimed at eliminating the practice of forced eviction and in adopting all necessary preventive measures in order to protect potential victims of forced evictions, population transfers and internal displacement, who usually are the poorest and the most socially, economically, ecologically and politically disadvantaged and vulnerable sectors of society.

19. The members of the Subcommission are invited to consider the present report, with a view to proposing further elements that could enhance the drafting of guidelines on international events and forced evictions for the consideration of the Subcommission at its forty-eighth session.

Notes

1/ "A global survey of forced evictions: a violation of human rights", prepared for the forty-third session of the Subcommission, August 1991 by Habitat International Coalition.

2/ Scott Leckie, When Push comes to Shove: Forced Evictions and Human Rights, Habitat International Coalition, 1995.

3/ "Forced evictions: violations of human rights", Paper prepared for the World Conference on Human Rights, Centre on Housing Rights and Evictions, June 1993.